

1996

State of Utah v. Charis Eastmond : Brief of Appellant

Utah Court of Appeals

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Jan Graham; Utah Attorney General; Appeals Division; Counsel for Appellee.

Margaret P. Lindsay; Utah County Public Defenders Assoc.; Counsel for Appellant.

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IN THE UTAH COURT OF APPEALS

BUCKET NO. 96004-CA

STATE OF UTAH,

Plaintiff/Appellee,

VS.

CHARIS EASTMOND,

Defendant/Appellant.

Case No. 960016-CA

Priority No. 2

BRIEF OF APPELLANT

APPEAL FROM THE FOURTH JUDICIAL COURT, UTAH COUNTY,
STATE OF UTAH, ~~FROM A CONVICTION FOUR COUNTS OF CONTROLLED~~
SUBSTANCE VIOLATIONS IN A DRUG-FREE ZONE,
THE HONORABLE RAY M. HARDING PRESIDING

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FILED

JUN 26 1964

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
	:	
Plaintiff/Appellee,	:	
	:	Case No. 960016-CA
vs.	:	
	:	
CHARIS EASTMOND,	:	Priority No. 2
	:	
Defendant/Appellant.	:	
	:	

JURISDICTION OF THE UTAH COURT OF APPEALS

This Court has appellate jurisdiction in this matter pursuant to the provisions of Utah Code Annotated § 78-2a-3(2)(f) (1992 as Amended) whereby a defendant in a district court criminal action may take an appeal to the Court of Appeals from a final order for anything other than a first degree or capital felony.

ISSUE PRESENTED AND STANDARD OF REVIEW

1. Was the evidence sufficient to sustain the jury's verdict and finding that these violations occurred in a "drug-free zone"? A jury conviction is reversed for insufficient evidence only when the evidence is "so inconclusive or so inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime of which he was convicted." State v. Goddard, 871 P.2d 540, 543

(Utah 1994) (quoting State v. Petree, 659 P.2d 443, 444 (Utah 1983)).

This issue was preserved in a motion to dismiss made at the close of the State's case (R. 340-45).

CONTROLLING STATUTORY PROVISIONS

Utah Code Annotated § 58-37-8 (1995)

See Addenda.

STATEMENT OF THE CASE

A. Nature of the Case

Charis Eastmond appeals from a conviction of: Possession of Methamphetamine in a Drug-Free Zone, a second degree felony, in violation of Utah Code Annotated Section 58-37-8(2)(a)(i); Possession of Cocaine in a Drug-Free Zone, a second degree felony, in violation of Utah Code Annotated Section 58-37-8(2)(a)(i); Possession of Marijuana in a Drug-Free Zone, a class A misdemeanor, in violation of Utah Code Annotated Section 58-37-8(2)(a)(i); and Possession of Drug Paraphernalia in a Drug-Free Zone, a class A misdemeanor, in violation of Utah Code Annotated Section 58-37a-5(a).

B. Course of Proceedings and Disposition in Trial Court

Charis Eastmond was charged by Information with Possession of Methamphetamine, possession of cocaine, possession of marijuana and possession of drug paraphernalia--all in a drug-free zone--in Fourth Circuit Court in the Fall of 1994 (R. 4-5).

On January 19, 1995, Eastmond waived her right to a preliminary hearing and was bound-over to Fourth District Court for Arraignment before the Honorable Ray M. Harding on February 17, 1995, where she entered a plea of "not guilty" to the charges (R. 27-28, 33).

A jury trial was conducted on May 1-2, 1995, with Judge Harding presiding (R. 200-373). At the close of the State's case, Eastmond made a Motion to Dismiss on grounds that the evidence was insufficient as to the "drug-free zone" element of the charged offenses (R. 340-45). The trial court took this issue under advisement until sentencing and granted the State's motion for inclusion of instructions on the lesser-included offenses of possession of cocaine, methamphetamine, marijuana and paraphernalia (R. 343-345, 350, 371-72).

At the close of trial on May 2, 1995, Eastmond was found "guilty" of all four counts as charged (R. 149-154, 368-71); and on December 1, 1995, she was sentenced by Judge Harding to thirty-six months probation on all four counts as charged (R. 184-86).

On January 2, 1996, Eastmond filed a Notice of Appeal with the Fourth District Court and this appeal followed (R. 193).

STATEMENT OF RELEVANT FACTS

On the evening of August 3, 1994, a search warrant was executed by the American Fork Swat Team and the Utah County Narcotics Enforcement Team ("NET") on a home located on the

property of the Saratoga resort (R. 244-45, 307-08). The defendant, Charis Eastmond, was present in the home at the time of the warrant's execution (R. 250, 308).

During the search NET found: a 35mm film canister in a purse which contained cocaine residue (R. 265); an amber vial which also contained cocaine residue (R. 268, 286-87); a broken light bulb which tested positive for methamphetamine residue (R. 272, 289); and some marijuana found in a zipped compartment of the purse (R. 293). In addition, the officers found a number of syringes, a set of finger scales, and a sugar bowl with a glass apparatus inside that was charred on the ends (R. 258, 261, 290-91).

Eastmond was charged with possession of cocaine in a drug-free zone; possession of methamphetamine in a drug-free zone; possession of marijuana in a drug-free zone; and possession of paraphernalia in a drug-free zone. The State argued that the drug-free zone language was applicable to the charges because the house on which the search warrant was executed was located on the grounds of the Saratoga resort, a Utah County water park that was currently open to the public because so many people were allowed to use it (R. 343).

At trial, Michael Dortch, an employee of Saratoga Springs Development Corporation who was responsible for maintenance of the Saratoga Resort during the Summer of 1994, was called to testify. Dortch testified that, although insurance was kept on the property, the resort was not open to the public during August

of 1994 and that the gates were locked (R. 312-13). Dortch testified that specific families--local people and friends who signed waivers of liability--were allowed daily access to the grounds, pools, and occasionally the water slide (R. 314-15, 319). Dortch estimated that maybe 10,000 people used the park during the summer (R. 320). However, Dortch also testified that it was his choice as to who was allowed access to the property and that people were denied access including several requests for commercial activities such as company parties (R. 315-16, 318).

SUMMARY OF ARGUMENT

Eastmond asserts that the evidence was insufficient to support the jury's finding that these allegations were committed in a drug-free zone. Based upon the evidence produced at trial, reasonable minds must have entertained a reasonable doubt that Saratoga was "open to the public" as required by Jury Instruction #11, which defines "drug-free zone." Therefore, Eastmond asks this Court to reverse her convictions because the evidence was insufficient to establish the "drug-free zone" element of the charged offenses.

ARGUMENT

POINT I

THE EVIDENCE PRODUCED AT TRIAL WAS INSUFFICIENT AS TO THE ELEMENT OF "DRUG-FREE ZONE"

Eastmond was charged with, and ultimately convicted of, possession of cocaine in a drug-free zone; possession of

methamphetamine in a drug-free zone; possession of marijuana in a drug-free zone; and possession of paraphernalia in a drug-free zone. One of the elements common to all four of these convictions was that the offense allegedly occurred in a "drug-free zone" as defined by Utah Code Annotated Section 58-37-8(5).

At the close of the State's case, Eastmond moved the court for a dismissal of the drug-free zone language because Saratoga, the resort on which the house was located, was not open to the public at the alleged time of the offense (R. 340). The State responded that the drug-free zone language was applicable to the charges because the house on which the search warrant was executed was located on the grounds of the Saratoga resort, a Utah County water park--which although not open to the public, was used by a lot of people (R. 343). The trial court took this issue under advisement but granted the State's request for the inclusion of lesser-included offense instructions and verdict forms (R. 350, 371-72).

Jury Instruction #11 defines a drug-free zone as "any area within 1,000 feet of the grounds or structure of a recreation area, *open to the public*, designed or intended for recreational use to which children are likely to go, irrespective of public or private ownership" (R. 135). Eastmond argues that the evidence produced at trial was insufficient to support the jury's finding that the State had proved the "drug-free zone" elements beyond a reasonable doubt.

A jury conviction is reversed for insufficient evidence only when the evidence is "so inconclusive or so inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime of which he was convicted." State v. Goddard, 871 P.2d 540, 543 (Utah 1994) (quoting State v. Petree, 659 P.2d 443, 444 (Utah 1983)).

Eastmond asserts that reasonable minds "must have entertained reasonable doubt" that these violations occurred in a drug-free zone. At trial, Michael Dortch, who was responsible for the maintenance of Saratoga during August of 1994, testified that insurance was kept on the Saratoga property during the Summer of 1994, and that approximately 60 families--who had all signed waivers of liability--were allowed daily access to the grounds, pools, and occasionally the water slide (R. 314-15, 319). Dortch estimated that maybe 10,000 people used the park during the course of the summer (R. 320).

However, Dortch also testified that Saratoga was not open to the public during August of 1994 and that the gates were locked (R. 312-13). Moreover, Dortch testified that it was his choice as to who was allowed access to the property and that people were denied access--including several requests which had been made for commercial activities such as company parties (R. 315-16, 318).

In addition, Eastmond, whose family had owned Saratoga at one time and who was living on the property, testified that the gates at Saratoga were both padlocked and that entrance required a key (R. 329). Eastmond also testified that "No Trespassing"

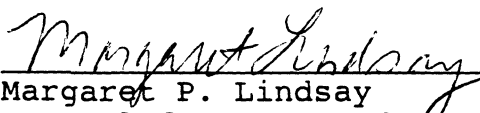
signs were posted along with a sign that read "Saratoga closed for the Summer Due to Major Renovations" (R. 329-30).

Jury Instruction #11 defines "drug-free zone" as a recreation area "open to the public" (R. 135). Eastmond asserts that the evidence is "inconclusive" and that "reasonable minds must have entertained a reasonable doubt" that Saratoga was open to the public and that these crimes were committed in a drug-free zone. See Goddard, 871 P.2d at 543. Accordingly, Eastmond asks this Court to reverse her convictions because the evidence was insufficient to establish the "drug-free zone" element of the charged offenses.

CONCLUSION AND PRECISE RELIEF SOUGHT

Eastmond asks this Court to reverse her convictions because of insufficient evidence as to an element of the charged offenses.

DATED this 17 day of June, 1996.


Margaret P. Lindsay
Counsel for Eastmond

CERTIFICATE OF MAILING

I hereby certify that I mailed, postage prepaid, two true and correct copies of the foregoing Brief Of Appellant to Jan Graham, Utah Attorney General, Appeals Division, Heber Wells Building, 160 East 300 South, Sixth Floor, P.O. Box 140854, Salt Lake City, UT 84114, this 17 day of June, 1996.

Margaret Lindsay

ADDENDA

(15) All costs associated with recording and submitting data as required in this section shall be assumed by the submitting drug outlet.

History: C. 1953, 58-37-7.5, enacted by L. 1995, ch. 333, § 3.

Effective Dates. — Laws 1995, ch. 333, § 4 makes the act effective on July 1, 1995

58-37-8. Prohibited acts — Penalties.

(1) Prohibited acts A — Penalties:

(a) Except as authorized by this chapter, it is unlawful for any person to knowingly and intentionally:

(i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;

(ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;

(iii) possess a controlled substance in the course of his business as a sales representative of a manufacturer or distributor of substances listed in Schedules II through V except that he may possess such controlled substances when they are prescribed to him by a licensed practitioner; or

(iv) possess a controlled or counterfeit substance with intent to distribute.

(b) Any person convicted of violating Subsection (1)(a) with respect to:

(i) a substance classified in Schedule I or II is guilty of a second degree felony and upon a second or subsequent conviction of Subsection (1)(a) is guilty of a first degree felony;

(ii) a substance classified in Schedule III or IV, or marijuana, is guilty of a third degree felony, and upon a second or subsequent conviction punishable under this subsection is guilty of a second degree felony; or

(iii) a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction punishable under this subsection is guilty of a third degree felony.

(2) Prohibited acts B — Penalties:

(a) It is unlawful:

(i) for any person knowingly and intentionally to possess or use a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of his professional practice, or as otherwise authorized by this subsection;

(ii) for any owner, tenant, licensee, or person in control of any building, room, tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied by persons unlawfully possessing, using, or distributing controlled substances in any of those locations;

(iii) for any person knowingly and intentionally to be present where controlled substances are being used or possessed in violation of this chapter and the use or possession is open, obvious, apparent, and not concealed from those present; however, a person may not be convicted under this subsection if the evidence shows that he did not use the

substance himself or advise, encourage, or assist anyone else to do so; any incidence of prior unlawful use of controlled substances by the defendant may be admitted to rebut this defense;

(iv) for any person knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance;

(v) for a practitioner licensed under this chapter knowingly and intentionally to prescribe, administer, or dispense a controlled substance to a juvenile, without first obtaining the consent required in Section 78-14-5 of a parent, guardian, or person standing in loco parentis of the juvenile except in cases of an emergency; for purposes of this subsection, a juvenile means a "child" as defined in Section 78-3a-2, and "emergency" means any physical condition requiring the administration of a controlled substance for immediate relief of pain or suffering;

(vi) for a practitioner licensed under this chapter knowingly and intentionally to prescribe or administer dosages of a controlled substance in excess of medically recognized quantities necessary to treat the ailment, malady, or condition of the ultimate user; or

(vii) for any person to prescribe, administer, or dispense any controlled substance to another person knowing that the other person is using a false name, address, or other personal information for the purpose of securing the same.

(b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

(i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

(ii) a substance classified in Schedule I or II, or marijuana, if the amount is more than 16 ounces, but less than 100 pounds, is guilty of a third degree felony; or

(iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A misdemeanor.

(c) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or any public jail or other place of confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b).

(d) Upon a second or subsequent conviction of possession of any controlled substance by a person previously convicted under Subsection (2)(b), that person shall be sentenced to a one degree greater penalty than provided in this subsection.

(e) Any person who violates Subsection (2)(a)(i) with respect to all other controlled substances not included in Subsection (2)(b)(i), (ii), or (iii), including less than one ounce of marijuana, is guilty of a class B misdemeanor. Upon a second conviction for possession of a controlled substance as provided in this subsection, the person is guilty of a class A misdemeanor, and upon a third or subsequent conviction he is guilty of a third degree felony.

(f) Any person convicted of violating Subsections (2)(a)(ii) through (2)(a)(vii) is:

(i) on a first conviction, guilty of a class B misdemeanor;

- (ii) on a second conviction, guilty of a class A misdemeanor; and
 - (iii) on a third or subsequent conviction, guilty of a third degree felony.
- (3) Prohibited acts C — Penalties:
 - (a) It is unlawful for any person:
 - (i) who is subject to this chapter to distribute or dispense a controlled substance in violation of this chapter;
 - (ii) who is a licensee to manufacture, distribute, or dispense a controlled substance to another licensee or other authorized person not authorized by his license;
 - (iii) to omit, remove, alter, or obliterate a symbol required by this chapter or by a rule issued under this chapter;
 - (iv) to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this chapter; or
 - (v) to refuse entry into any premises for inspection as authorized by this chapter.
 - (b) Any person convicted of violating Subsection (3)(a) shall be punished by a civil penalty of not more than \$5,000. The proceedings are independent of, and not in lieu of, criminal proceedings under this chapter or any other law of this state. If the violation is prosecuted by information or indictment which alleges the violation was committed knowingly or intentionally, that person is upon conviction guilty of a third degree felony.
- (4) Prohibited acts D — Penalties:
 - (a) It is unlawful for any person knowingly and intentionally:
 - (i) to use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person or, for the purpose of obtaining a controlled substance, to assume the title of, or represent himself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;
 - (ii) to acquire or obtain possession of, to procure or attempt to procure the administration of, to obtain a prescription for, to prescribe or dispense to any person known to be attempting to acquire or obtain possession of, or to procure the administration of any controlled substance by misrepresentation or failure by the person to disclose his receiving any controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order for a controlled substance, or the use of a false name or address;
 - (iii) to make any false or forged prescription or written order for a controlled substance, or to utter the same, or to alter any prescription or written order issued or written under the terms of this chapter;
 - (iv) to furnish false or fraudulent material information in any application, report, or other document required to be kept by this chapter or to willfully make any false statement in any prescription, order, report, or record required by this chapter; or
 - (v) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render any drug a counterfeit controlled substance.

(b) Any person convicted of violating Subsection (4)(a) is guilty of a third degree felony.

(5) Prohibited acts E — Penalties:

(a) Notwithstanding other provisions of this section, a person not authorized under this chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances Act, is upon conviction subject to the penalties and classifications under Subsection (5)(b) if the act is committed:

(i) in a public or private elementary or secondary school or on the grounds of any of those schools;

(ii) in a public or private vocational school or post-secondary institution or on the grounds of any of those schools or institutions;

(iii) in those portions of any building, park, stadium, or other structure or grounds which are, at the time of the act, being used for an activity sponsored by or through a school or institution under Subsections (5)(a)(i) and (ii);

(iv) in or on the grounds of a preschool or child-care facility;

(v) in a public park, amusement park, arcade, or recreation center;

(vi) in a church or synagogue;

(vii) in a shopping mall, sports facility, stadium, arena, theater, movie house, playhouse, or parking lot or structure adjacent thereto;

(viii) in a public parking lot or structure;

(ix) within 1,000 feet of any structure, facility, or grounds included in Subsections (5)(a)(i) through (viii); or

(x) with a person younger than 18 years of age, regardless of where the act occurs.

(b) A person convicted under this subsection is guilty of a first degree felony and shall be imprisoned for a term of not less than five years if the penalty that would otherwise have been established but for this subsection would have been a first degree felony. Imposition or execution of the sentence may not be suspended, and the person is not eligible for parole until the minimum term of imprisonment under this subsection has been served.

(c) If the classification that would otherwise have been established would have been less than a first degree felony but for this subsection, a person convicted under this subsection is guilty of one degree more than the maximum penalty prescribed for that offense.

(d) It is not a defense to a prosecution under this subsection that the actor mistakenly believed the individual to be 18 years of age or older at the time of the offense or was unaware of the individual's true age; nor that the actor mistakenly believed that the location where the act occurred was not as described in Subsection (5)(a) or was unaware that the location where the act occurred was as described in Subsection (5)(a).

(6) Any violation of this chapter for which no penalty is specified is a class B misdemeanor.

(7) Any person who attempts or conspires to commit any offense unlawful under this chapter is upon conviction guilty of one degree less than the maximum penalty prescribed for that offense.

(8) (a) Any penalty imposed for violation of this section is in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

(b) Where violation of this chapter violates a federal law or the law of another state, conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

(9) (a) When it appears to the court at the time of sentencing any person convicted under this chapter that the person has previously been convicted of an offense under the laws of this state, the United States, or another state, which if committed in this state would be an offense within this chapter and it appears that probation would not be of benefit to the defendant or that probation would be contrary to the interest, welfare, or protection of society, the court, notwithstanding Section 77-18-1, may if there is compliance with Subsection (9)(b), impose a minimum term to be served by the defendant, of up to $\frac{1}{2}$ the maximum sentence imposed by law for the offense committed. For violations of this section, this subsection supersedes Section 77-18-4.

(b) (i) Before any person may be sentenced to a minimum term as provided in Subsection (9)(a), the prosecuting attorney, or grand jury if an indictment, shall cause to be subscribed upon the complaint, in misdemeanor cases, or the information or indictment, in addition to the substantive offense charged, a statement setting forth the alleged past conviction of the defendant and specifically stating the date and place of conviction and the offense of which the defendant was convicted. The allegation shall be presented to the defendant at the time of his arraignment, or afterwards by leave of court, but in no event later than two days prior to the trial of the offense charged or the defendant's entering a plea of guilty. At the time of arraignment or a later date when granted by the court, the court shall read the allegation of the previous conviction to the defendant, provide him or his counsel with a copy of it, and explain to the defendant the consequences of the allegation under Subsection (9)(a). The allegation of the past conviction of the defendant is not admissible in a jury trial, except where the admissibility in evidence of a previous conviction is otherwise recognized as admissible by law.

(ii) The court, following conviction of the defendant of the substantive offense charged and prior to imposing sentence, shall inform the defendant of its decision to impose a minimum sentence under Subsection (9)(a) and inquire as to whether the defendant admits or denies the previous conviction. If the defendant denies the previous conviction, the court shall afford him an opportunity to present evidence showing that the allegation of the past conviction is erroneous or the conviction was lawfully vacated or the defendant was pardoned. The evidence shall be made a matter of record. Following the evidence, the court shall make a finding as to whether the defendant has a previous conviction, which finding is final, except for a showing of abuse of discretion. Following the findings by the court, the defendant shall be sentenced under Subsection (9)(a) or under the appropriate penalty provided by law, as the court in its discretion determines.

(c) Any person sentenced on a second offense to probation who violates that probation is subject to Subsections (9)(a) and (9)(b).

(d) For violations of this section, Subsection (9) supersedes Section 76-3-203.5.

(10) In any prosecution for a violation of this chapter, evidence or proof which shows a person or persons produced, manufactured, possessed, distributed, or dispensed a controlled substance or substances, is prima facie evidence that the person or persons did so with knowledge of the character of the substance or substances

(11) This section does not prohibit a veterinarian, in good faith and in the course of his professional practice only and not for humans, from prescribing, dispensing, or administering controlled substances or from causing the substances to be administered by an assistant or orderly under his direction and supervision

(12) Civil or criminal liability may not be imposed under this section on

(a) any person registered under the Controlled Substances Act who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or investigational new drug by a registered practitioner in the ordinary course of professional practice or research, or

(b) any law enforcement officer acting in the course and legitimate scope of his employment

(13) If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application

History: L. 1971, ch. 145, § 8; 1972, ch. 22, § 1, 1977, ch. 29, § 6; 1979, ch. 12, § 5; 1985, ch. 146, § 1; 1986, ch. 196, § 1; 1987, ch. 92, § 100; 1987, ch. 190, § 3; 1988, ch. 95, § 1; 1989, ch. 50, § 2; 1989, ch. 56, § 1; 1989, ch. 178, § 1; 1989, ch. 187, § 2; 1989, ch. 201, § 1; 1990, ch. 161, § 1; 1990, ch. 163, § 2; 1990, ch. 163, § 3; 1991, ch. 80, § 1; 1991, ch. 198, § 4; 1991, ch. 268, § 7; 1995, ch. 284, § 1.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, added the last sentence in Subsection (9)(a) and rewrote Sub-

section (9)(d) which read "Nothing in this section in any way limits or restricts Sections 76-8-1001 and 76-8-1002 "

Cross-References. — Cities and towns, prohibitions of sales of narcotics to minors, § 10-8-47

Psychotoxic chemical solvents, penalties for use or sale, § 76-10-101 et seq

Sentencing for felonies, §§ 76-3-201, 76-3-203, 76-3-301

Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301

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FILED IN
4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR UTAH COUNTY

STATE OF UTAH

STATE OF UTAH

plaintiff,

VS.

CHARIS EASTMOND

defendant.

CASE NO. 951400053

JURY TRIAL

VOLUME I

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PROVO, UTAH 84604

BEFORE: THE HONORABLE RAY M. HARDING

DATE: MAY 1, 1995

REPORTED BY: CREED H. BARKER, CSR

FILED

APR - 2 1996

COURT OF APPEALS

960016-CA

CREED H. BARKER, CSR

I-N-D-E-X

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

IN AND FOR UTAH COUNTY

STATE OF UTAH

STATE OF UTAH

Plaintiff, CASE NO 951400053

VS

JURY TRIAL

CHARIS EASTMOND

VOLUME I

defendant.

APPEARANCES

FOR THE STATE:

DAVID COLE
DEPUTY UTAH COUNTY ATTORNEY
100 E CENTER, #2100
PROVO, UTAH 84606

FOR THE PLAINTIFF

SHELDEN CARTER
CARTER, PHILLIPS & WILKINSON
3325 NO UNIVERSITY AVE.
PROVO, UTAH 84604

BEFORE: THE HONORABLE RAY M. HARDING

DATE: MAY 1, 1995

REPORTED BY: CREED H. BARKER, CSR

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MR. CARTER

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- [1] Monday, May 1, 1995
- [2] State of Utah vs. Charis Eastmond
- [3] THE COURT: I appreciate you folks being
- [4] here and participating with us. I know you would
- [5] rather be a lot of different places than sitting here
- [6] in this courtroom, but without your participation the
- [7] system doesn't work. The constitution of both the
- [8] State of Utah and the United States provides that an
- [9] individual is entitled to a trial by a jury of one's
- [10] peers, and if you don't participate we're unable to
- [11] have that type of a proceeding.
- [12] In order to be competent to serve as a
- [13] juror there are certain questions that I must ask of
- [14] you. They're very brief and it will just take a
- [15] minute. But before doing so, it's necessary that we
- [16] place you under oath. And you're going to find that
- [17] we must dearly love oaths since there are a number of
- [18] them that must be taken. And after the clerk has
- [19] administered that oath to you, if you will all respond
- [20] by either saying yes or no. So, if those of you here
- [21] as jurors would please stand and raise your
- [22] right-hand, the clerk will administer an oath to you.
- [23] (Competency oath given to jury panel)
- [24] THE COURT: In order to be competent to
- [25] serve as a juror you must be a citizen of the United

- [1] States, 18 years of age or more, be a resident of
- [2] Utah county and be able to read, speak and understand
- [3] the English language. Are there any of you who do not
- [4] meet those levels of competency, if you would raise
- [5] your hand, please.
- [6] Very good. The record may show you're all
- [7] competent to serve as jurors.
- [8] Now, there are some criteria which would
- [9] render you not competent, and those are if any of you
- [10] have been convicted of a felony, are presently serving
- [11] on active duty in the military service of the United
- [12] States, or are not capable of rendering satisfactory
- [13] jury service because of a physical or mental
- [14] disability as attested to by an attending physician.
- [15] Are there any of you not competent for any of those
- [16] reasons, if you would raise your hand.
- [17] Yes, ma'am.
- [18] THE JUROR: I am partially deaf in one ear.
- [19] THE COURT: Have you had any trouble
- [20] hearing me thusfar?
- [21] THE JUROR: No.
- [22] THE COURT: Very well. We'll note you have
- [23] that disability, but as long as you're sufficiently
- [24] able to hear in this case, I think you probably will
- [25] be able to hear during the course of the trial.

[1] Very well The court will find that the
 [2] jury is competent to serve for this term of court.
 [3] Now one-third of the term of court has
 [4] already passed Your term started if you'll recall
 [5] with notice effective the 1st of April And we'll ask
 [6] three months of you So you've done pretty good not
 [7] to have to appear until today And we hope that you
 [8] may not have to appear again Only eight of you will
 [9] be required to try the case that we're about to get
 [10] underway and the rest of you will be going home very
 [11] shortly However if your luck is like mine why
 [12] you'll probably be one of the eight I'm one of those
 [13] that you know if I were the only participant in a
 [14] drawing I couldn't win
 [15] When I started practicing law we had
 [16] legislatively created what we called exemptions from
 [17] jury service And the legislature had created certain
 [18] classifications principally having to do with
 [19] employment that would exempt you from jury service
 [20] Over the years I saw that list of exemptions increase
 [21] with every session of the legislature to the point
 [22] that about the only ones who were not exempt from jury
 [23] service were retired people Every conceivable
 [24] occupation virtually had exempted itself by lobbying
 [25] the legislature and as a consequence about 10 or 12

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[1] problem I had to go down -- I have many essay exams
 [2] and reports to grade and classes that start on
 [3] Wednesday
 [4] THE COURT Where do you teach at sir?
 [5] MR. MILLER: BYU
 [6] THE COURT All right We'll make a note
 [7] of that As I indicated specifically inconvenience
 [8] to business is not one of the reasons but perhaps the
 [9] lawyers in exercising their rights will see fit to
 [10] give you an excuse relative to this case
 [11] MR. MILLER: There's a deadline for grades
 [12] for the students
 [13] THE COURT I understand the problem
 [14] Thank you very much
 [15] All right I see one other hand
 [16] MR. HOUSTON Rod Houston I work at
 [17] Timpview high school I was scheduled to take eight
 [18] kids in a van down to cedar city for a vocational
 [19] contest today and tomorrow
 [20] THE COURT All right thank you sir
 [21] Anyone else? All right thank you
 [22] As I indicated to begin with I will
 [23] understand and appreciate the fact that you have other
 [24] places and other things that you would rather be doing
 [25] and that it is not always convenient to be here And

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[1] years ago the legislature realized that it was
 [2] reaching a point where a person was really not getting
 [3] a trial by a jury of one's peers because of the
 [4] exemptions that were being granted from jury service
 [5] As a consequence at that time they did away with all
 [6] exemptions No one is now exempt from jury service
 [7] And I think that was probably an appropriate move
 [8] Now the court is by statute given the
 [9] right to excuse jurors upon a showing of undue
 [10] hardship extreme inconvenience or public necessity
 [11] And the legislature indicates in the same statute
 [12] granting that authority that the court is not to
 [13] excuse jurors for slight or trivial cause nor for
 [14] hardship or inconvenience to business And so with
 [15] that explanation are there any of you who feel you
 [16] would be unable to serve because of an undue hardship
 [17] extreme inconvenience or public necessity if you
 [18] would raise your hand?
 [19] All right sir if you'll stand and tell me
 [20] your name
 [21] MR. MILLER: Wade Miller
 [22] THE COURT And Mr. Miller your problem?
 [23] MR. MILLER: The problem I have is I just
 [24] got back last night from attending a meeting in
 [25] California I'm teaching And as a result of this

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[1] we know that and we try to make it as convenient as
 [2] possible and to hold you here for as short a time as
 [3] possible However I think the thing that must never
 [4] be overlooked is the fact that we have a great
 [5] constitution And the only way this particular
 [6] constitutional provision will work is by citizen
 [7] participation because that's what it calls for Even
 [8] though our system is not perfect and in some cases
 [9] perhaps far from it it's still the best system that
 [10] exists on earth today And there are people literally
 [11] dying in the streets of cities and towns and villages
 [12] throughout the world in order to hopefully achieve
 [13] even a part of the rights and privileges which we
 [14] have So if we will give some consideration to that
 [15] and the recognition and need for that participation in
 [16] order for the system to work we should be grateful we
 [17] have the opportunity and privilege of being
 [18] participants in this type of situation After all I
 [19] believe this room and all courtrooms like it represent
 [20] the difference between civilization and savagery The
 [21] right to a trial by a jury of one's peers is what lies
 [22] at the heart of every free nation Many of those
 [23] countries don't trust their citizenry enough to give
 [24] them a right to a trial by jury Of course that's
 [25] one of the rights they're striving to obtain

[1] At this time we're going to play a little
 [2] game of musical chairs. Before doing so, however, the
 [3] clerk is going to administer another oath to you. But
 [4] before doing that, I'll inquire of counsel first --
 [5] this is case #961400063, State of Utah versus Charis
 [6] Eastmond -- is the state ready to proceed?
 [7] MR. COLE: We are, your Honor.
 [8] THE COURT: And is the defendant ready?
 [9] MR. CARTER: We are, your Honor.
 [10] THE COURT: Very well. At this time I'll
 [11] ask the clerk to administer another oath to the
 [12] prospective jury.
 [13] (jury oath given)
 [14] THE COURT: If you'll come forward as your
 [15] names are called, and be seated in the chairs where
 [16] the bailiff directs you. And before doing that,
 [17] counsel, would you approach the bench, please?
 [18] (Bench conference held)
 [19] THE COURT: After conferring with counsel,
 [20] I'm going to excuse Mr. Miller and Mr. Houston.
 [21] You'll be free to go about your affairs at this time.
 [22] All right.
 [23] THE CLERK: David Taylor.
 [24] Stan Weaver.
 [25] Debra Oldroyd.

[1] Any of you related? Any of you admit to being
 [2] related? You choose your friends and not your
 [3] relatives.
 [4] All right, the record may show no one has
 [5] indicated they are related.
 [6] Any of you as jurors acquainted with one
 [7] another? All right, Miss Prince, I see your hand up.
 [8] Who is it you're acquainted with?
 [9] MS. PRINCE: Clayne Pope is my stake
 [10] president, but I really want to serve. I don't have
 [11] anywhere else to be today, so don't send me home.
 [12] THE COURT: All right. And based upon that
 [13] position would you have difficulty if you should find
 [14] yourself believing differently than Mr. Pope; would
 [15] you be able to maintain that independence regardless
 [16] of that position he has with you?
 [17] MS. PRINCE: Yes.
 [18] THE COURT: Do you feel in this
 [19] circumstance you could disregard that relationship and
 [20] base your opinion solely upon the facts and evidence
 [21] presented?
 [22] MS. PRINCE: Yes.
 [23] THE COURT: Mr. Pope, how about you?
 [24] MR. POPE: Yes.
 [25] THE COURT: Ms. Thoreson?

[1] Lori England.
 [2] Laurie Atkins.
 [3] Steven Masterson.
 [4] Paul Whittaker.
 [5] Colleen Turner.
 [6] Philip Patton.
 [7] Ryan Partridge.
 [8] Sherry Merrill.
 [9] Cari Prince.
 [10] Kevin Crystal.
 [11] Gregory Christensen.
 [12] Marilyn Shepard.
 [13] Harrison Allison.
 [14] Gary Anderson.
 [15] Dortha Cordner.
 [16] Lillian Thoreson.
 [17] Melba Turner.
 [18] Clayne Pope.
 [19] Joseph Deroest.
 [20] THE COURT: All right, good to have you up
 [21] here where I can see you a little better.
 [22] Now, we're going to make some inquiry
 [23] relative to you individually so we can get a little
 [24] better acquainted. First of all, I would like to know
 [25] if any of you are related to one another as jurors.

[1] MS. THORESON: Phil Patten used to be a
 [2] neighbor of mine years ago when he was younger, but I
 [3] haven't seen him for years.
 [4] THE COURT: All right. Anything about that
 [5] association that would make it difficult for you to
 [6] remain independent in this matter?
 [7] MS. THORESON: No.
 [8] THE COURT: And what about you, Mr. Patten?
 [9] MR. PATTEN: I wasn't even sure that was
 [10] her. The name sounded familiar, but you know, it's
 [11] been a long time ago.
 [12] THE COURT: All right, very good. Anyone
 [13] else? Okay, very good.
 [14] I'm going to have the clerk now read the
 [15] information to you. And this is the basis by which
 [16] the State of Utah charges the defendant with these
 [17] offenses. And these are merely accusations against
 [18] the defendant and remain only accusations until you,
 [19] as jurors, would decide that the defendant is guilty
 [20] of those offenses, if that should be the case.
 [21] If you'll go ahead and read that.
 [22] THE CLERK: The State of Utah vs. Charis
 [23] Eastmond. Kay Bryson, Utah County Attorney, State of
 [24] Utah, accuses the defendant of the following:
 [25] Count one: Possession or use of

[1] methamphetamine a controlled substance, in a
 [2] drug-free zone, a second degree felony in violation
 [3] of 58-37-8 (two) (A) (I) Utah code annotated, 1963 as
 [4] amended in that defendant on or about August 3,
 [5] 1994 in Utah County Utah did knowingly and
 [6] intentionally possess or used methamphetamine, a
 [7] schedule II controlled substance in a drug-free zone
 [8] Count two Possession or use of cocaine, a
 [9] controlled substance in a drug-free zone a second
 [10] degree felony in violation of 58-37-8 (two) (A) (I)
 [11] Utah code annotated 1963 as amended in that
 [12] defendant on or about August 3 1994 in Utah County,
 [13] Utah did knowingly and intentionally possess or used
 [14] cocaine a schedule II controlled substance in a
 [15] drug-free zone
 [16] Count three Possession or use of
 [17] marijuana, a controlled substance in a drug-free
 [18] zone a class A misdemeanor in violation of 58-37-8
 [19] (two) (A) (I) Utah code annotated 1963, as amended,
 [20] in that the defendant on or about August 3, 1994, in
 [21] Utah County Utah did knowingly and intentionally
 [22] possess or used marijuana a schedule I controlled
 [23] substance in a drug-free zone
 [24] Count four Unlawful possession of drug
 [25] paraphernalia in a drug-free zone a class A

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[1] MS SHEPPARD My daughter
 [2] THE COURT How long ago was that?
 [3] MS SHEPPARD It's been probably three
 [4] years
 [5] THE COURT Did that result in some
 [6] criminal action being taken?
 [7] MS SHEPPARD A fine
 [8] THE COURT All right. And so there was
 [9] either a plea of guilty --
 [10] MS SHEPPARD No
 [11] THE COURT For a --
 [12] MS SHEPPARD Well guilty She was
 [13] guilty and so she paid the fine I think she did have
 [14] to spend some weekends in jail
 [15] THE COURT Very well As a result of that
 [16] would you be able to put that incident aside and try
 [17] this case solely on the facts and evidence presented
 [18] and not have that event influence you?
 [19] MS SHEPPARD No I think I would be okay
 [20] THE COURT Okay thank you And then,
 [21] Mr Anderson I believe you had your hand up?
 [22] MR ANDERSON Yes sir
 [23] THE COURT And who was --
 [24] MR ANDERSON My daughter
 [25] THE COURT And how long ago was that?

[1] misdemeanor in violation of 58-37A-6 (A), Utah code
 [2] annotated 1963 as amended in that defendant on or
 [3] about August 3 1994 in Utah County Utah, did
 [4] knowingly and intentionally possess an item of drug
 [5] paraphernalia in a drug-free zone with intent to use
 [6] said item to inject, inhale or otherwise introduce a
 [7] controlled substance into the human body
 [8] This information is based on evidence sworn
 [9] to by officer Caldwell signed Utah County attorney
 [10] Carlisle K. Bryson and Deputy county Attorney Claudia
 [11] Laycock
 [12] THE COURT Now as I ask you a few further
 [13] questions, I'm going to use from time to time the term
 [14] "members of your immediate family" And by that term
 [15] I will mean a husband wife mother father, brother,
 [16] sister son or daughter okay And that will be for
 [17] our purpose "immediate family"
 [18] So I would like to inquire if any of you or
 [19] members of your immediate family have ever been
 [20] accused of an offense similar to that which has been
 [21] charged in this case? If you would raise your hand
 [22] All right. Let's see, Ms. Shepard, I
 [23] believe you had your hand up
 [24] MS SHEPPARD Uh-huh (affirmative)
 [25] THE COURT Who was that?

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[1] MR. ANDERSON About a year
 [2] THE COURT All right. And did that result
 [3] in a criminal prosecution?
 [4] MR. ANDERSON She paid I believe it was a
 [5] \$200 fine
 [6] THE COURT All right. And as a result of
 [7] that would you have difficulty in being fair and
 [8] impartial here as a juror?
 [9] MR. ANDERSON No problem
 [10] THE COURT You feel you could set that
 [11] incident aside and try this case on its own facts and
 [12] evidence?
 [13] MR. ANDERSON Certainly
 [14] THE COURT All right. Let's see,
 [15] Mr Partridge
 [16] MR. PARTRIDGE Yeah my brother
 [17] THE COURT How long ago was that?
 [18] MR. PARTRIDGE Probably at least five
 [19] years ago
 [20] THE COURT Did that result in a
 [21] conviction?
 [22] MR. PARTRIDGE Yes
 [23] THE COURT And as a result of that
 [24] incident would you have difficulty in being fair and
 [25] impartial as a juror here today?

- [1] MR. PARTRIDGE: No.
- [2] THE COURT: Do you feel you could set that
- [3] incident aside and try this case based solely upon the
- [4] facts and evidence presented?
- [5] MR. PARTRIDGE: Yes.
- [6] THE COURT: Okay, thank you. Anyone else?
- [7] Okay, thank you.
- [8] Now, during the course of this proceeding
- [9] you're going to hear the testimony of police officers
- [10] or officer. And I would instruct you as a matter of
- [11] law that a police officer is not entitled to any
- [12] greater credibility as a witness than any other
- [13] witness who may be called. The mere fact that he is a
- [14] police officer does not entitle him to some special
- [15] consideration or believability merely because of the
- [16] office he holds.
- [17] Do any of you have any trouble in accepting
- [18] that instruction? Can you agree with that and accept
- [19] that in your determination?
- [20] All right. Now, I've asked that question,
- [21] are there any of you who have been police officers or
- [22] involved in law enforcement or have members of your
- [23] immediate family who are involved in law enforcement?
- [24] If you would raise your hand.
- [25] All right, thank you. Now, in order to

- [1] facilities.
- [2] THE COURT: Any of you acquainted with the
- [3] witnesses or attorneys identified? I'll always start
- [4] at the back and work down.
- [5] All right, I believe Ms. Oldroyd, you had
- [6] your hand up.
- [7] MS. OLDROYD: I'm acquainted with Gary
- [8] Caldwell.
- [9] THE COURT: Is that close and personal or
- [10] just an acquaintance?
- [11] MS. OLDROYD: Just I know who he is. I
- [12] don't particularly care for him.
- [13] THE COURT: Is there anything in that
- [14] relationship that would make it difficult for you to
- [15] be fair and impartial in your consideration of his
- [16] testimony?
- [17] MS. OLDROYD: Umm, he's already told me he
- [18] would lie at any point to make a case, so I have that
- [19] problem already with his testimony.
- [20] THE COURT: Okay. I believe Ms. England,
- [21] you had your hand up as well.
- [22] MS. ENGLAND: I live in American Fork and
- [23] I'm familiar with their names. I don't know the
- [24] officers personally, I just know of them.
- [25] THE COURT: Is there anything in that

- [1] become better acquainted I would like the attorneys to
- [2] introduce themselves and the witnesses whom they
- [3] intend to call in this case. Now they're not present
- [4] here, the witnesses, other than the defendant. And so
- [5] listen carefully to those names, because we'll want to
- [6] know if you're acquainted with any of them.
- [7] Counsel, you may go ahead.
- [8] MR. COLE: My name is David coal. I work
- [9] for the criminal division of the County Attorney's
- [10] office. The individuals in that division are Craig
- [11] Madsen, chief, Jim Taylor, Claudia Laycock, John
- [12] Allen, Sherry Ragan, Phil Hadfield, Marianne Baldwin,
- [13] Matt Jube, Curtis Larsen and Kay Bryson is the County
- [14] Attorney.
- [15] Some of our potential witnesses -- we'll
- [16] not be calling all of these, but are subpoenaed --
- [17] Gary Caldwell from the American Fork police
- [18] department; Sam Liddiard from that department, Richard
- [19] Jensen from that department, James Munson from the
- [20] Lehi police department, Lee Fox from the narcotics
- [21] enforcement task force, Denton Johnston from that same
- [22] task force, Shawn Adamson, Andre Leavitt from the task
- [23] force, Russell Billings from the task force, Kevin
- [24] Smith who works at the Utah State Crime Lab and
- [25] Michael Dorch who is the caretaker of the Saratoga

- [1] association that would make it difficult for you in
- [2] being fair and impartial in your consideration of this
- [3] case?
- [4] MS. ENGLAND: No.
- [5] THE COURT: Do you feel whatever
- [6] association you have had you could set that aside and
- [7] try the case on the facts and evidence presented?
- [8] MS. ENGLAND: Yes.
- [9] THE COURT: Okay, thank you. Anyone else
- [10] on that back row? Mr. Masterson.
- [11] MR. MASTERSON: I lived by Andre Leavitt
- [12] until about six months ago.
- [13] THE COURT: Okay, does that create any
- [14] difficulty for you in setting that association aside?
- [15] MR. MASTERSON: No, sir.
- [16] THE COURT: Do you feel you can be fair and
- [17] impartial in your consideration of his testimony and
- [18] the other witnesses?
- [19] MR. MASTERSON: Yes, your Honor.
- [20] THE COURT: All right. Thank you, sir.
- [21] All right, how about the next row down;
- [22] anyone there? I don't think I saw any hands in that
- [23] row.
- [24] All right, let's go to this row. And
- [25] Ms. Shepard, I believe you had your hand up again.

[1] MS. SHEPPARD: Yes. I have talked to Shawn
 [2] Adamson on the phone quite a bit over a problem we had
 [3] at my home, but I haven't met him personally.
 [4] THE COURT: How long has that been?
 [5] MS. SHEPPARD: That has been just the past
 [6] six, seven months.
 [7] THE COURT: Is there anything in that
 [8] association that would now make it difficult for you
 [9] in being fair and impartial in your consideration of
 [10] his testimony?
 [11] MS. SHEPPARD: No.
 [12] THE COURT: Do you feel you can set that
 [13] association aside and just try the case on the facts
 [14] and evidence presented?
 [15] MS. SHEPPARD: Yes.
 [16] THE COURT: Okay, thank you.
 [17] Ms. Thoreson?
 [18] MS. THORESON: I've met Kay Bryson, but I
 [19] wouldn't say I was really acquainted with him.
 [20] THE COURT: Anything in that association
 [21] that would make it difficult for you in being fair and
 [22] impartial here today?
 [23] MS. THORESON: No.
 [24] THE COURT: All right. Anyone else on that
 [25] row?

[1] MS. ADKINS: I don't think so.
 [2] THE COURT: Do you feel you could set that
 [3] association aside and try this case on the facts and
 [4] evidence presented?
 [5] MS. ADKINS: Uh-huh (affirmative). I do
 [6] like him.
 [7] MR. CARTER: I've played her boy now and
 [8] again.
 [9] THE COURT: If the facts and circumstances
 [10] warranted a finding against his client, would you have
 [11] any difficulty in doing that?
 [12] MS. ADKINS: No, I could do okay.
 [13] THE COURT: You feel you could be fair and
 [14] impartial?
 [15] MS. ADKINS: Uh-huh (affirmative).
 [16] THE COURT: Anyone else on that row?
 [17] The next row, anyone? All right,
 [18] Mr. Masterson.
 [19] MR. MASTERSON: I know Mr. Shelden Carter.
 [20] THE COURT: Is there anything in that
 [21] association that would make it difficult for you to be
 [22] fair and impartial as a juror?
 [23] MR. MASTERSON: It may. I've employed
 [24] Mr. Carter to represent my son in a legal matter.
 [25] THE COURT: Okay. Is he now your attorney

[1] How about the front row; anyone there? All
 [2] right, thank you.
 [3] Mr. Carter?
 [4] MR. CARTER: My name is Shelden Carter. I
 [5] practice with a group of people, one being Lynn
 [6] Harris, another being Rodney Wilkinson, Scott
 [7] Phillips, Doug Baxter, Brook Sessions. We anticipate
 [8] as witnesses today, other than potentially the
 [9] defendant, Mike Peterson, Can Kapinskie and Corey
 [10] Jacobsen.
 [11] THE COURT: Would you like to introduce
 [12] your client?
 [13] MR. CARTER: This is Chans, and she's the
 [14] accused in this matter.
 [15] THE COURT: Thank you. Any of you
 [16] acquainted with the attorneys, witnesses or defendant,
 [17] if you would raise your hand, please.
 [18] All right. We'll start with Ms. Adkins.
 [19] MS. ADKINS: I know Mr. Carter. He was a
 [20] coach -- our boys were on the same sports team. And I
 [21] know also Lynn Harris.
 [22] THE COURT: All right. And is there
 [23] anything in that acquaintanceship that would now
 [24] create a problem for you in being fair and impartial
 [25] as a juror?

[1] in any matter?
 [2] MR. MASTERSON: No.
 [3] MR. CARTER: His son's case is still
 [4] ongoing.
 [5] THE COURT: Okay, anyone else?
 [6] Okay, thank you. Now, in order to still
 [7] get further acquainted with you we would like to have
 [8] you tell us a little bit about yourselves. And we'll
 [9] start in the order in which you were seated, starting
 [10] with Mr. Taylor.
 [11] And what we would like to know is your
 [12] name. And we do that for identification on the
 [13] record, and so that's why we ask you to be seated. So
 [14] if you're married, your spouse's name. If you have
 [15] children, how many and how many of them are living at
 [16] home. And what you do by way -- where you work, and
 [17] what you do there by way of the type of work you do.
 [18] And if you're married, your spouse's work, whether it
 [19] be in the home or out of the home, as the case may be.
 [20] And then what community you reside in. So names and
 [21] numbers of children, number at home, occupation and
 [22] community in which you reside, not the street address.
 [23] MR. TAYLOR: David Taylor. I live in Lehi.
 [24] My wife is Colleen. She's employed with alpine school
 [25] district as a part-time teacher with the handicapped

[1] kids I work for the west valley city fire
 [2] department. I'm a firefighter and EMT with them I'm
 [3] supposed to be there today so it's a nice break I
 [4] live in Lehi -- oh my part-time job I'm a carpet
 [5] layer

[6] THE COURT Do you have children?

[7] MR. TAYLOR: I have six boys four living
 [8] at home two out of high school And I see them every
 [9] once in awhile One is going to college and one is
 [10] working

[11] THE COURT Very well thank you

[12] Mr Weaver

[13] MR. WEAVER Stan Weaver I live in Provo
 [14] My wife's name is Janet and she's a homemaker We
 [15] have two children both of them are at home I work
 [16] for central Utah water and control

[17] THE COURT Okay thank you Ms Oldroyd

[18] MS OLDROYD Debra Oldroyd I live in
 [19] American Fork and I'm married to Jeff Oldroyd We
 [20] have three children three sons one is married and
 [21] the other two are still living at home and in
 [22] elementary school My husband works for the alpine
 [23] school district as a track coach at American Fork
 [24] junior high And I work with kids failing and
 [25] dropping out of school

[1] MS ADKINS And I'm a secretary at Windsor
 [2] elementary in Orem and have a daughter that's married
 [3] and graduated from BYU I have a son on a mission in
 [4] Kobe Japan -- he was there during the earthquake --
 [5] and a daughter that's home with my husband who was
 [6] also in the accident.

[7] THE COURT Okay thank you

[8] MR. MASTERSON My name is Steve Masterson
 [9] I live in American Fork I am separated from my wife
 [10] at this time I have one son that's 18 and I work at
 [11] Telflex Precision Casting as an inspector

[12] THE COURT Okay thank you

[13] Mr Whittaker

[14] MR. WHITTAKER My name is Paul Whittaker
 [15] and I reside in Spanish Fork My wife's name is
 [16] Kenna She's an office manager for an orthodontist in
 [17] Springville Dr Thoen I have four kids ages 15 16
 [18] and 12 living at home I am a salesman and mechanic
 [19] for Pearson Tire in Provo

[20] THE COURT Okay thank you

[21] MS TURNER Colleen turner I live in
 [22] Lehi My husband is Gary He's employed with Novell
 [23] I have three children one in college and two at home
 [24] And I'm employed at RR Donnelly I deal with computer
 [25] software

[1] THE COURT Thank you Ms England

[2] MS ENGLAND Lori England and my
 [3] husband's name is David As I mentioned we're from
 [4] American Fork We have five children and they all
 [5] live at home And I work for -- I do the art counsel
 [6] for American Fork And I organize all of the art
 [7] gatherings and support and do things there And my
 [8] husband works for Geneva steel Is there anything I
 [9] missed?

[10] THE COURT What does he do at Geneva
 [11] steel?

[12] MS ENGLAND He's a supervisor in the
 [13] foundry

[14] THE COURT Thank you Ms Adkins

[15] MS ADKINS Laurie Adkins My husband's
 [16] name is Livingston Elwood but he goes by Tom which
 [17] you would too if your name was Livingston And I
 [18] didn't want to claim hardship but I did want to make
 [19] the court aware my husband was involved with my
 [20] daughter in a four-wheel accident with my daughter
 [21] down in Green River And he's home with bruised ribs
 [22] and a broken collar bone and in fact it's impossible
 [23] for him to get out of a chair without my assistance

[24] THE COURT Well you'll know where he's
 [25] at

[1] THE COURT Thank you Mr Patten

[2] MR. PATTEN: My name is Phil and my wife is
 [3] Rannelle She works part-time doing data entry with
 [4] Manpower Temporary Service right now working with RR
 [5] Donnelly I work for the Orem/Geneva times as a
 [6] manager there And we have four children at home

[7] THE COURT Mr Partridge

[8] MR. PARTRIDGE Ryan Partridge I live in
 [9] Orem My wife's name is Jennifer We have a 10
 [10] month-old baby girl And I'm a student at BYU and I
 [11] work part-time as an apprentice with my father-in-law

[12] THE COURT What are you majoring in in
 [13] school?

[14] MR. PARTRIDGE Japanese and business

[15] THE COURT Ms Merrill

[16] MS MERRILL Sherry Merrill and I'm
 [17] married My husband's name is Jeff Johnson I work
 [18] at Creekside Home Care as a social worker and my
 [19] husband is employed at graphic solutions as a computer
 [20] photographer No children

[21] THE COURT Thank you Ms Prince

[22] MS PRINCE My name is Cari prince and my
 [23] fiancée is Lawrence Browning And I'm a student at
 [24] BYU And I'm from Houston Texas but I live in Provo
 [25] and am a resident here and will be for awhile

[1] THE COURT: What are you majoring in in
[2] school?
[3] MS. PRINCE: Public policy. It's kind of
[4] like political science.
[5] THE COURT: Thank you. Mr. Crystal.
[6] MR. CRYSTAL: Kevin crystal. I'm an
[7] assistant service manager with Gary's Service Station
[8] in Orem. I go to UVSC, and I have no wife and no
[9] children.
[10] THE COURT: What are you taking in school?
[11] MR. CRYSTAL: General education.
[12] THE COURT: Okay. Mr. Christensen.
[13] MR. CHRISTENSEN: Greg Christensen. My
[14] wife's name is Jana. We have three children. We
[15] reside in Orem. I work at Novell in the parts
[16] division as an operations manager. My wife is a
[17] homemaker.
[18] THE COURT: Thank you. Ms. Shepard.
[19] MS. SHEPPARD: Marilyn shepard. My
[20] husband's name is Gary. He works at Pacific States
[21] Pipe. I am a beautician by trade and homemaker. We
[22] have two daughters, but neither one of them live at
[23] home.
[24] THE COURT: Thank you. Mr. Allison.
[25] MR. ALLISON: My name is Harrison Allison.

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[1] daughter and son-in-law may be moving in for awhile.
[2] Family is in and out. I work in Salt Lake at the
[3] department of commerce, commerce and tax service
[4] center where I'm the supervisor. And we do part of
[5] the tax duties also, issuing numbers, in addition to
[6] filing the corporations and business names and things
[7] of that nature.
[8] THE COURT: Okay, thank you. Ms. Turner.
[9] MS. TURNER: Melba turner. My husband's
[10] name is Nelson, and we're both retired. We have seven
[11] children, all married, none of them at home.
[12] THE COURT: What did you both do before
[13] retirement?
[14] MS. TURNER: I ran a cafe, and my husband
[15] was a welder for the Granite school district.
[16] THE COURT: Mr. Pope.
[17] MR. POPE: Clayne pope. My wife's name is
[18] Carolyn Moore Pope. She works at home. We have two
[19] children: one age 22, the other 19. I work at BYU.
[20] I'm a professor of economics, and dean of the college
[21] of family home and social sciences.
[22] THE COURT: Okay, thank you. Mr. Deroest.
[23] MR. DEROEST: Joseph Deroest. My family
[24] lives in Pleasant Grove. My wife and I work there in
[25] the family business. I have two sons, two daughters,

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[1] I live in Orem. I'm divorced. I have a daughter and
[2] a son. My daughter is in college. My son lives with
[3] me. I work at -- sometimes I live there -- Geneva
[4] steel, and I work on the railroad at Geneva.
[5] THE COURT: Thank you. Mr. Anderson.
[6] MR. ANDERSON: My name is Gary Anderson.
[7] and I live in Pleasant Grove. I am employed by alpine
[8] school district as a teacher at Pleasant Grove Junior
[9] High. I teach English and junior achievement. My
[10] wife works with alpine school district as a contracted
[11] aid with the disabled. We have four daughters; three
[12] at home, one married who lives away.
[13] THE COURT: Thank you. Ms. Cordner.
[14] MS. CORDNER: I'm married to Guy Cordner.
[15] He's retired from Geneva steel in the accounting
[16] department. I am retired from running a mobile home
[17] park. We sold it, so we're both retired and just
[18] working at golf. And we have four children. They're
[19] all married. They're all living away, but they come
[20] home for R & R. And that's it.
[21] THE COURT: Thank you. Ms. Thoreson.
[22] MS. THORESON: Kay Thoreson and I have -- I
[23] don't have a husband. I have eight children and 15
[24] grandchildren. And technically right now I just have
[25] one granddaughter living with me temporarily, a

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[1] and one daughter works in the family business.
[2] THE COURT: Okay, thank you.
[3] All right, counsel, are there further
[4] questions you would like the court to ask of the
[5] jurors? Mr. Carter?
[6] MR. CARTER: Should I direct this to the
[7] court?
[8] THE COURT: Please.
[9] MR. CARTER: I would like to make some
[10] inquisition regarding Ms. Shepard's association with
[11] Mr. Adamson. Is it some situation where she had some
[12] affinity or correlated her values with his or
[13] something of that nature?
[14] THE COURT: All right. You mentioned that
[15] you'd had some extended contact with officer Adamson
[16] on the telephone, but never met him personally.
[17] MS. SHEPPARD: No.
[18] THE COURT: And was that -- has that been
[19] an extended conversation? Tell us about that.
[20] MS. SHEPPARD: Well, the girl that's
[21] married to my grandson was living in my basement. And
[22] there was some drug dealings and stuff. And so
[23] through people talking his name was brought up. So I
[24] called him maybe four times and we talked about what
[25] the problem was and what I could do about it. And

- [1] that's what it was
- [2] MR. CARTER: That's all
- [3] THE COURT: Counsel, if you'll approach the
- [4] bench, please.
- [5] (Bench conference held)
- [6] THE COURT: Okay, counsel. I'll ask that
- [7] you exercise your peremptory challenges above the red
- [8] line.
- [9] THE COURT: Okay. I'll ask the clerk to
- [10] read the names of those eight jurors who have been
- [11] selected to try this case. Go ahead.
- [12] THE CLERK: David Taylor, Lon England,
- [13] Steven Masterson, Colleen Turner, Can Prince, Gregory
- [14] Christensen, Gary Anderson, Lillian Thoreson.
- [15] THE COURT: Those of you whose names were
- [16] called, if you would stand, we're going to administer
- [17] one last oath to you.
- [18] (Selected jury panel sworn)
- [19] THE COURT: If you'll be seated, there.
- [20] For those of you who are not going to spend
- [21] the day with us, it's nice to meet you and good to
- [22] have you here. I appreciate your assistance and
- [23] cooperation. You make the system work even though you
- [24] weren't selected to try the case. And in just a
- [25] second you'll be free to leave out the door you came

- [1] rebuttal evidence that may be produced will then
- [2] follow. And at that point the court will then
- [3] instruct you in the law that governs in this case.
- [4] You will then hear the closing arguments by first the
- [5] state, then the defendant and any rebuttal by the
- [6] state.
- [7] The reason that the state has the
- [8] opportunity of giving what in effect might be
- [9] considered two closing arguments is because they carry
- [10] the burden of proof. The defendant, as she sits here
- [11] today, is innocent of those crimes charged. And the
- [12] law so presumes. That presumption must continue to
- [13] prevail in your minds until such time that you
- [14] deliberate and should you find by beyond a reasonable
- [15] doubt that the evidence has proved her guilty.
- [16] At the close of the arguments the case will
- [17] then be submitted to you for your deliberations. As
- [18] jurors you have the responsibility of finally
- [19] determining the determining factors in the case. And
- [20] you're the sole judges of the facts in this case. I
- [21] will manage the trial proceedings within the norms of
- [22] the law and accepted procedure. As my primary
- [23] responsibility I will rule on the admissibility of
- [24] evidence and instruct you as jurors on the law that's
- [25] to govern in this case. It's your duty as jurors to

- [1] For those eight who are going to try the
- [2] case, if you care to, we'll have you exit through this
- [3] door. We'll take about a 10 minute recess where you
- [4] can use the restrooms and place any telephone calls to
- [5] let family and friends know where you're going to be
- [6] spending your day.
- [7] To all of you, my thanks and appreciation.
- [8] And I hope to see you again, but not necessarily upon
- [9] jury service. So thank you very much. We'll be in
- [10] recess.
- [11] (recess held)
- [12] THE COURT: The record may show the jury is
- [13] all present, that counsel for the state and counsel
- [14] for the defendant and the defendant are present.
- [15] At the outset of the trial I would like to
- [16] explain a few matters that may help you in carrying
- [17] out your role as jurors. This case will be presented
- [18] to you essentially in the following order. We'll have
- [19] first the opening statement by the state. The
- [20] defendant may give their opening statement at that
- [21] time following the state's or they may reserve it and
- [22] give it at the beginning of their evidence.
- [23] Following opening statements there will be
- [24] a presentation of the plaintiff's evidence, and then a
- [25] presentation of the defendant's evidence. Any

- [1] accept the instructions as I give it to you, as the
- [2] law in this case, regardless of what you personally
- [3] believe the law is or ought to be.
- [4] Nothing I may say or do during the course
- [5] of the trial is intended to indicate, nor should be
- [6] taken by you as indicating what I would do were I
- [7] deciding the facts. And you should not consider any
- [8] personal actions of mine in arriving at your verdict.
- [9] You're to remember that the statements of
- [10] the attorneys and their questions are not evidence
- [11] and they're not to be considered as such. The
- [12] evidence from which you will determine the facts are
- [13] the exhibits and the testimony presented to you by the
- [14] witnesses called in this matter.
- [15] Are there any preliminary matters, counsel?
- [16] MR. COLE: None.
- [17] MR. CARTER: None.
- [18] THE COURT: Very well. You may proceed
- [19] then with your opening statement.
- [20] MR. COLE: Thank you. Good morning. My
- [21] name is David Cole, and I represent the state in this
- [22] matter. Here at the beginning of the case it's my
- [23] responsibility to give you a thumbnail sketch of what
- [24] you're about to hear so as you hear the evidence
- [25] you'll be able to place it in proper perspective. So

[1] evidence comes in in a little different fashion than
 [2] we like. So we like to give you an overview of what
 [3] you're going to hear.
 [4] First, I would like to do that first.
 [5] August 3 of 1994, last year, at the Saratoga resort,
 [6] there was a home. And that home was occupied by the
 [7] defendant, Chans Eastmond. She had lived there for
 [8] several years. Based upon information obtained by the
 [9] owners and others, the narcotics enforcement task
 [10] force and other police organizations raided the home.
 [11] When they raided the home, Chans was on the phone.
 [12] She was immediately arrested and handcuffed and
 [13] searched. They found miscellaneous cash, some food
 [14] stamps and a small glass vial, which was subsequently
 [15] tested by the state crime lab and tested to have
 [16] cocaine residue.
 [17] They then searched her purse, which is a
 [18] large grab bag item which contained a smaller purse
 [19] inside. And in that item, they found a film canister
 [20] which had cocaine residue. They also found \$270 in
 [21] cash, various small parts of marijuana, fragments of
 [22] various leaves that were tested at the crime lab and
 [23] found to be marijuana and paraphernalia items.
 [24] Throughout the house, they found other items which were
 [25] paraphernalia items used to inject controlled

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[1] cocaine, which is a controlled substance, possession
 [2] of marijuana, and possession of the drug paraphernalia
 [3] necessary to use those items. And then we'll ask you
 [4] to enhance each of those charges one degree because of
 [5] the location.
 [6] THE COURT: Mr. Carter.
 [7] MR. CARTER: With the court's permission, I
 [8] would like to reserve our opening statement until we
 [9] present our case.
 [10] THE COURT: Very well. You may do so.
 [11] MR. CARTER: We would also like to impose
 [12] the exclusionary rule.
 [13] THE COURT: All right. The exclusionary
 [14] rule may be invoked. And counsel, if you'll assist
 [15] the court in that regard, I don't know who the
 [16] witnesses are, but as witnesses may appear, you're to
 [17] advise them they're to remain out of the courtroom
 [18] until called to testify. They're not to discuss the
 [19] case with anyone else, including each other, except
 [20] for the attorneys present here. If you'll assist us
 [21] in enforcing that.
 [22] Before beginning counsel with your first
 [23] witness, one note to the jury. We provide notebooks
 [24] and pencils. And that's intentional on our part. And
 [25] we encourage you to do so to aid your memory. But let me

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[1] substances.
 [2] You'll hear primarily there are three ways
 [3] people inject controlled substances. One is through
 [4] the membranes of the nose, using straws or things of
 [5] that nature. You'll hear those kinds of items were
 [6] found throughout the home. You'll also hear people
 [7] smoke various items of controlled substances. And
 [8] it's an interesting process that takes some
 [9] interesting equipment and cigarettes. And you'll hear
 [10] about the paraphernalia of that kind found in the
 [11] home.
 [12] You'll also hear the last way people inject
 [13] controlled substances, principally methamphetamine and
 [14] cocaine, is to use syringes. And you'll hear many
 [15] syringes were found throughout the home with some kind
 [16] of residue on them.
 [17] You'll also hear that Saratoga is a resort.
 [18] And that is known as what is called a drug-free zone
 [19] in that people were allowed during the summer last
 [20] year on an as-needed basis to use that resort as a
 [21] place of enjoyment for church groups, Boy Scout groups
 [22] and other youth groups. And at the close of the
 [23] evidence, we'll ask you to find the defendant guilty
 [24] for different things, possession of methamphetamine,
 [25] which is a controlled substance, possession of

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[1] give you one word of caution in doing so. Don't
 [2] become so involved in your note-taking that you don't
 [3] watch the witness. Because as you know, much of what
 [4] we convey in our communication process is by way of
 [5] what we call "body language," and that body language
 [6] conveys about 80 percent of what we receive. Only
 [7] about 20 percent of what you hear is going to make an
 [8] impression. The other 80 percent is going to come
 [9] from what you observe. So don't get so involved in
 [10] the note-taking that you forget to watch the
 [11] witnesses.
 [12] And also, don't assume that because you
 [13] wrote it down that it's the only correct thing that
 [14] exists. Your notes are for your own personal use, and
 [15] the fact you may have taken notes and another person
 [16] may not have does not mean that your memory and recall
 [17] is any better than another person's.
 [18] So, with that word of caution, feel free to
 [19] take notes. But just don't become too involved and so
 [20] busy that you're writing down one thing and missing
 [21] the next statement that was made that may be more
 [22] important than what you were writing down. So be
 [23] careful.
 [24] All right. With that counsel, you may
 [25] proceed with your first witness.

[1] MR. COLE: The state would call detective
[2] Johnston to the stand. And I would ask that detective
[3] Lee Fox remain at counsel table.

[4] THE COURT: Very well, if you'll come
[5] forward and raise your right-hand, the clerk will
[6] administer the oath.

[7]
[8] DENTON JOHNSTON
[9] called as a witness herein, having been duly
[10] sworn, was examined and testified as follows:

[11]
[12] THE COURT: Be seated in the witness chair,
[13] please.

[14]
[15] DIRECT EXAMINATION

[16] BY MR. COLE:

[17] Q. Tell us your name for the record.

[18] A. Denton Johnston.

[19] Q. Where are you presently employed?

[20] A. I'm employed with the Orem city police
[21] department.

[22] Q. What's your present assignment?

[23] A. I'm assigned as an investigator with the
[24] Utah County narcotics enforcement team.

[25] Q. Would you tell me briefly what the

[1] enforcement team is

[2] A. The enforcement team is a cooperative
[3] effort between all the police agencies in Utah County
[4] We receive federal grant monies to investigate
[5] narcotics, street level narcotic related crimes. The
[6] cities in the county match those funds. Each city,
[7] per population, gives a certain amount to match to our
[8] grant funds. We then become a separate entity. We
[9] don't work out of any police department or anything.
[10] And our primary purpose is to investigate the
[11] violations of the Utah Controlled Substance Act, which
[12] is basically narcotics violations, drug violations.

[13] Q. How long have you been a police officer?

[14] A. Seven years.

[15] Q. How long have you been doing narcotics
[16] enforcement?

[17] A. About 20 months full-time narcotics
[18] enforcement.

[19] Q. Have you received some special training
[20] with regard to narcotics?

[21] A. Yes, I have.

[22] Q. Would you tell us briefly about that,
[23] please.

[24] A. I have attended the DEA field school. It's
[25] a two week course that the DEA, Drug Enforcement

[1] Administration, puts on throughout the United States.
[2] It's specifically designed for officers such as
[3] myself. It's a basic overview of the narcotics
[4] violations and investigative techniques. Also I've
[5] attended the Utah State Drug Academy. It's also a two
[6] week course taught here in Salt Lake that's quite a
[7] bit similar to the Drug Enforcement Administration
[8] school, except it covers more of the local laws and
[9] local transit of narcotics and enforcement.

[10] Q. Explain to us exactly what cocaine is.

[11] A. Cocaine is, as we know, is actually cocaine
[12] hydrochloride. It's a drug extracted from the cocoa
[13] leaf. This leaf is grown basically in South America.
[14] It's then extracted through a chemical synthesis using
[15] sulfuric acid and such, and made into a cocoa paste.
[16] The paste then again is chemically altered to make
[17] what is known as cocaine.

[18] Q. What's the effect that cocaine has on
[19] people?

[20] MR. CARTER: Judge, we object. I don't
[21] know what relevance this would have to the issues here
[22] today.

[23] MR. COLE: I think they need some
[24] background.

[25] THE COURT: I'll sustain the objection.

[1] Q. (BY MR. COLE) Could you give us a brief
[2] explanation of what methamphetamine is?

[3] A. A chemically manufactured -- entirely
[4] chemically manufactured central nervous system
[5] stimulant developed, I believe, in the 30's as a
[6] stimulant. They were looking for an amphetamine and,
[7] I believe, it was made in Germany to help the troops.
[8] They found out it was an experiment gone awry; that
[9] the body reacts with an elevated heart rate. They may
[10] experience a high up to 15 hours. And like I say,
[11] it's an amphetamine. It elevates the body's blood
[12] pressure and heart rate. It's quite a powerful
[13] stimulant say compared to your diet pills, which are
[14] also amphetamines.

[15] Q. What methods are used to inject cocaine and
[16] methamphetamine in the body?

[17] A. There's three basic methods, the first
[18] being snorting, a form of inhalation. That's where
[19] the drug is laid out on the table, usually chopped
[20] fine with a razor blade, put in a line, then it's
[21] snorted up the nose and absorbed in the blood stream
[22] through the mucus membranes, the soft issue in your
[23] nasal passages.

[24] The second is by smoking, also a form of
[25] inhalation. Most people don't understand the fact

[1] that inhalation by smoking something is the quickest
 [2] way that a drug can be induced in the bloodstream.
 [3] Most people think it's injection, but it's actually
 [4] smoking it
 [5] The cocaine hydrochloride, the cocaine as
 [6] we know it is acidic in nature. Therefore, the
 [7] cocaine has to be turned into a base --
 [8] MR. CARTER: Objection. We're beyond the
 [9] scope of the question. He's going back more into the
 [10] historical history.
 [11] THE COURT: I'll sustain the objection.
 [12] Q. (BY MR. COLE) Do you recall executing a
 [13] search warrant on August 3, 1994?
 [14] A. Yes
 [15] Q. Do you recall where that was?
 [16] A. Saratoga
 [17] Q. Is that in Utah County?
 [18] A. Yes
 [19] Q. Is there a home located on that premises?
 [20] A. Yes, there is.
 [21] Q. Could you explain briefly where that is in
 [22] relation to the rest of the buildings
 [23] A. To my recollection we went through the gate
 [24] on the north side of the park. And I believe about
 [25] 200 yards southwest by the water slides we came upon

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[1] Q. Was it in working order?
 [2] A. Yes, it was.
 [3] Q. Did you have an opportunity to see the
 [4] things you were videotaping?
 [5] A. Yes
 [6] Q. Was that videotape a fair representation of
 [7] what you actually see on here?
 [8] A. Yes, it was.
 [9] MR. COLE: Judge, I would move for
 [10] admission of state's exhibit No. 1, and request to
 [11] play it for the jury
 [12] THE COURT: Any objection?
 [13] MR. CARTER: We've not had an opportunity
 [14] to observe or view it at this time. I'm trusting --
 [15] THE COURT: I'll reserve ruling until
 [16] you've had an opportunity to review it.
 [17] MR. COLE: Judge, where would you like this
 [18] machine?
 [19] THE COURT: I'm going to allow Mr. Carter
 [20] to review it before playing it for the jury.
 [21] MR. COLE: I allowed Mr. Carter an
 [22] opportunity to view this last week, and he did not
 [23] take an opportunity.
 [24] MR. CARTER: I'm not looking at -- I don't
 [25] want to delay this any longer. I don't mind if we

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[1] the home. The home had already been secured by the
 [2] American Fork SWAT team when we got there
 [3] Q. Are you familiar with the Saratoga resort?
 [4] A. Not really
 [5] Q. Do you know if it's a recreational area?
 [6] A. Yes, it is
 [7] Q. Do you know if it's open to the public,
 [8] actually, last summer, I guess is the best way?
 [9] A. Yeah
 [10] Q. What was your assignment at the time?
 [11] A. My primary assignment was to videotape the
 [12] layout of the home, the individuals that we found
 [13] inside the home. Any evidence that was recovered I
 [14] was to video that in the place where it was recovered
 [15] from. After that I was to assist in the search of the
 [16] premises.
 [17] Q. Could you look at what's marked as state's
 [18] exhibit No. 1. Do you recognize that?
 [19] A. It's a videotape.
 [20] Q. Do you recall reviewing that at my office?
 [21] A. Yes, I do.
 [22] Q. When you were assigned to videotape at the
 [23] scene did you use a videotape machine you typically
 [24] use?
 [25] A. Yes, I did.

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[1] play it. I'm hoping that this is representative of
 [2] what happened.
 [3] MR. COLE: It is. It's about seven minutes
 [4] of videotape, just of items found in the home. If he
 [5] wants to review it first, that's fine. We could take
 [6] a break and do that after lunch.
 [7] MR. CARTER: Let's go ahead and play it.
 [8] THE COURT: All right.
 [9] MR. COLE: We need to place it where
 [10] everyone can see it.
 [11] Q. (BY MR. COLE) Detective, is this the
 [12] videotape itself that you reviewed?
 [13] A. Yes, it is.
 [14] Q. What is this first item here that's shown?
 [15] A. Those were the items that detective Sam
 [16] Liddiard asked me to videotape, those items, right as
 [17] I entered the home. As I said before, the home had
 [18] been secured prior to my entry into it. During the
 [19] briefing of the search warrant when assignments were
 [20] made, Detective Liddiard from the American Fork police
 [21] department knew I would be the one taking the video.
 [22] He called me over and asked me to video that
 [23] Q. These were taken from Charis Eastmond's
 [24] person; is that correct?
 [25] A. Yes.

[1] Q What is this down here?

[2] A It's a small brown glass vial

[3] Q Showing you what's marked as state's

[4] Exhibit 4 do you recognize that?

[5] A It's a vial similar to the one -- it is the

[6] one that's been initialed It's the vial taken in the

[7] video

[8] Q Could you take a look at I believe it's

[9] state's exhibit No. 2 and No. 3 as well And

[10] coordinate - we're going to have the numbers a little

[11] bit differently Would you tell us what Exhibit No. 3

[12] is first please

[13] A Exhibit No. 3 is a note 3 x 5 card --

[14] Q The whole document itself

[15] A This is the property report form -

[16] MR. CARTER: We object to the introduction

[17] of this testimony at this time by demonstration of

[18] that material to the jury at this time It's not been

[19] found to be admissible It looks like to me to be a

[20] police officer's report.

[21] MR. COLE: I'm not offering it into

[22] evidence I'm using it to refresh his memory on the

[23] numbers

[24] MR. CARTER: That's fine

[25] THE COURT: All right.

[1] THE COURT: Go ahead

[2] Q (BY MR. COLE) Once you had done that

[3] videotaping do you make some effort to videotape the

[4] persons involved?

[5] A Yes we do We videotape all individuals

[6] found inside the residence when we execute a warrant

[7] We ask them basic information: Name and date of birth

[8] and place of residence

[9] Q Was this an individual in the home at the

[10] time?

[11] A Yes

[12] Q Who is that?

[13] A That's Ms. Eastmond

[14] Q She's the defendant in this matter is that

[15] correct?

[16] A Yes sir

[17] Q Once you had done that -- let's see if I

[18] can get these buttons right

[19] Could you tell us what we're seeing at this

[20] point

[21] A That's a straw or a pen tube

[22] Q Do you recall which room this was found in?

[23] You're welcome to refer to that report

[24] MR. CARTER: May I voir dire the witness

[25] for a moment?

[1] Q (BY MR. COLE) That's the form you used to

[2] keep track of evidence is it not?

[3] A Yes

[4] Q Number 2 is --

[5] A This is the Utah State crime lab report

[6] that we received back from the Utah State Crime Lab in

[7] Salt Lake

[8] Q Now what I need you to do is coordinate

[9] the numbers between the various things so we can

[10] establish what has been sent to the crime lab and what

[11] has not

[12] On Exhibit No. 3 what is this?

[13] A That's called item number 1

[14] Q Does the crime lab indicate whether that

[15] item was tested?

[16] A Yes It's also item number 1 on the crime

[17] lab report It states that cocaine residue was

[18] detected in the amber vial

[19] Q And that would be state's Exhibit 4?

[20] A Yes

[21] MR. COLE: We would move admission of that.

[22] THE COURT: Any objection?

[23] MR. CARTER: No

[24] THE COURT: Four is received

[25] MR. COLE: Can I pass that to the jury?

[1] THE COURT: You may

[2]

[3] VOIR DIRE EXAMINATION

[4] BY MR. CARTER

[5] Q Did you create that report?

[6] A No

[7] Q Who did?

[8] A Brett Fuller

[9] Q Any information you would extract from that

[10] report you wouldn't have any personal knowledge of?

[11] A Only the items I found myself

[12] MR. CARTER: I would object to the

[13] officer's testimony of the report by himself unless

[14] it's corroborated later I would like to speed it

[15] along On the other hand if it's not corroborated by

[16] other officers later on I would move to strike

[17] THE COURT: All right. You may use it.

[18] MR. COLE: This item I will establish he

[19] found himself Detective Johnston was the one

[20]

[21] CONTINUED DIRECT EXAMINATION

[22] BY MR. COLE

[23] Q What are we seeing here?

[24] A As I finished videoing Ms. Eastmond I put

[25] the camera down and went on to searching And that is

[1] the top left drawer of the dresser in the only bedroom
 [2] in the house on the south side of the home. It's hard
 [3] to distinguish right there, but there are two or three
 [4] marijuana seeds in the bottom of that drawer, after
 [5] which I videotaped them and booked them into evidence.
 [6] MR. CARTER: Judge, we're going to object.
 [7] I don't mean to be an obstructionist, but that's not
 [8] been calculated by the state lab to be marijuana
 [9] seeds.
 [10] MR. COLE: I think the officer has
 [11] sufficient background to determine that.
 [12] THE COURT: I don't think you have the
 [13] foundation for it yet. Let's ask those questions.
 [14] Q. (BY MR. COLE) Would you look at state's
 [15] exhibit No. 5 for me, please. Are those the seeds you
 [16] found in that drawer?
 [17] A. Yes, they are.
 [18] Q. Do you, based upon your knowledge and
 [19] personal experience with narcotics, specifically
 [20] marijuana, have an opinion as to what those are?
 [21] A. Yes, I do.
 [22] Q. What are they?
 [23] A. Marijuana seeds.
 [24] THE COURT: Do you want to offer it now?
 [25] MR. COLE: Yes, I would.

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[1] A. Yes, sir.
 [2] Q. As you pan through the room did you turn
 [3] the videotape off at any time during this process?
 [4] A. Yeah. The videotape is going on and off
 [5] all the time. So it was probably shut off 10 times
 [6] during --
 [7] Q. During that pan of that particular scene,
 [8] did you?
 [9] A. Oh, no.
 [10] Q. So you came back immediately to what
 [11] Officer Porter was indicating to you?
 [12] A. That's correct.
 [13] Q. And is this what he showed to you?
 [14] A. Yes.
 [15] Q. Was that the location you found it?
 [16] A. Yes, it was.
 [17] Q. Would you check on that report and see
 [18] which number this was marked as?
 [19] A. 4A.
 [20] MR. COLE: Your Honor, this particular item
 [21] is enclosed in a safety container. It has several
 [22] different items.
 [23] Could you look in that object and see if
 [24] that contains the item we were talking about. Is that
 [25] state's Exhibit 6 for the state?

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[1] THE COURT: Mr. Carter?
 [2] MR. CARTER: No objection at this time.
 [3] THE COURT: All right. It will be
 [4] received.
 [5] MR. COLE: I would like to publish that as
 [6] well.
 [7] THE COURT: You may.
 [8] Q. (BY MR. COLE) Continuing on with the
 [9] videotape, could you tell us what section of the house
 [10] is being shown here?
 [11] A. This is, again, in the bedroom on the south
 [12] or southwest of the home. I don't exactly know which
 [13] way the house lies, but I know that was on the south
 [14] or southwest.
 [15] Q. Now, you're going to pan through the room
 [16] here; is that correct?
 [17] A. Yes.
 [18] Q. Who was the officer who was just right
 [19] here?
 [20] A. The one in the blue and white striped
 [21] shirt?
 [22] Q. Do you know?
 [23] A. Yes, officer Ronnie Porter of the Salem PD.
 [24] Q. And he's reaching for something at that
 [25] time; is he not?

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[1] MR. CARTER: Are you looking at your list?
 [2] MR. COLE: No, the numbers are off. This
 [3] is what I'm referring to. It was marked as 4A.
 [4] Q. (BY MR. COLE) You indicated previously --
 [5] is this item inside here, this blue syringe, that same
 [6] item?
 [7] A. Oh, yes. I misunderstood. There are three
 [8] different items in there.
 [9] Q. I apologize. We have three sets of numbers
 [10] we're working with.
 [11] That is the same syringe you found at the
 [12] scene?
 [13] A. Yes, it is.
 [14] Q. Or at least as you recall.
 [15] MR. COLE: I'll reserve my request to have
 [16] that entered until another witness arrives for other
 [17] items.
 [18] Q. (BY MR. COLE) Continuing on with the
 [19] video tape, could you indicate what section of the
 [20] house is now being shown?
 [21] A. That's still the bedroom.
 [22] Q. Can you describe what kind of items were
 [23] found in the bedroom, miscellaneous items?
 [24] A. As you can see there was a lot of stuff in
 [25] that bedroom.

[1] Q Did you indicate clothing items in the
 [2] home?
 [3] A Yes
 [4] Q What kinds of items male, female, child?
 [5] A They were women's clothing
 [6] Q Did you see any child's?
 [7] A I didn't see any
 [8] Q Did you see any indications of who else
 [9] might have been using that bedroom?
 [10] A As I recall there were arts and
 [11] crafts-type items there beads or something of that
 [12] nature home craft items
 [13] Q Let me see if I can get that to work a
 [14] little better
 [15] As you continued on this is now showing
 [16] another item I'll show you what's marked as state's
 [17] Exhibit 7 Could you look at that and tell me what
 [18] that is
 [19] A It's a syringe without the needle It's a
 [20] pen tube and a pill bottle
 [21] Q Now, is that indicated on your evidence
 [22] report as well?
 [23] A Yes, sir, it is
 [24] Q Is that the same item being shown here in
 [25] the video? Take a good look at it

[1] were called by another officer to search another area
 [2] of the home As it passes on we'll discuss the item
 [3] What are these indicated here?
 [4] A Those are finger scales
 [5] Q Who called you to videotape that?
 [6] A That was also Detective Porter of the Salem
 [7] PD
 [8] Q Would you take a look at that Was that
 [9] the same item found at the time?
 [10] A Yes sir
 [11] Q Does the outside packaging match this
 [12] packaging here?
 [13] A Yes sir
 [14] Q And the scales match the scales you have
 [15] there?
 [16] A Yes, sir
 [17] Q Did you film it in the location it was
 [18] found?
 [19] A Yes sir
 [20] MR. COLE Move for admission of state's
 [21] Exhibit 7
 [22] MR. CARTER No objection
 [23] THE COURT It will be received
 [24] Q (BY MR. COLE) Could you tell us what
 [25] finger scales are used for?

[1]
 1 A Oh, yes, it is
 [2] Q Where was that located?
 [3] A It was located on the dresser in the same
 [4] bedroom we had been looking at by Detective Russ
 [5] Billings
 [6] Q Are you aware of the movement of any of
 [7] those items?
 [8] A No Those items were not moved
 [9] Q Do you have personal knowledge of that?
 [10] A Yes I was in that bedroom until they were
 [11] removed
 [12] Q There are some other items in -- an unusual
 [13] pouch with a dark material in it, and two cotton swabs
 [14] with blue material on it Those are not to be
 [15] considered?
 [16] A No We put those in there
 [17] MR. COLE I move for admission of state's
 [18] Exhibit 7
 [19] MR. CARTER I don't know about the
 [20] entire --
 [21] MR. COLE We can remove the other items if
 [22] you would like
 [23] MR. CARTER That would be fine
 [24] THE COURT It will be received
 [25] Q (BY MR. COLE) Continuing on, you also

[1] A They're a portable way of measuring
 [2] something by weight.
 [3] Q How accurate are they?
 [4] A They're very accurate, as a matter of fact
 [5] Q In the context of drug usage what does that
 [6] entail, amount-wise?
 [7] A It ensures whoever is selling or buying the
 [8] specific amount of controlled substance that they're
 [9] getting what they're paying for
 [10] Q Is it accurate enough to measure small
 [11] quantities of controlled substances?
 [12] A I don't believe they're small enough to
 [13] measure grams, even though they will measure grams
 [14] But they are used extensively in marijuana buying and
 [15] selling, marijuana And they're very accurate in that
 [16] regard
 [17] Q Continuing on with the videotape, is this
 [18] what's marked as exhibit No. 8 on the evidence list?
 [19] A Yes it is
 [20] Q Would you indicate just what the bottle
 [21] with no pills in it is Does it look to you to be the
 [22] same bottle?
 [23] A Yes, sir, it does It's been initialed
 [24] also
 [25] Q Whose initials are on it?

[1] A The crime lab s
[2] Q Do you know if this was the same bottle
[3] found at the scene?
[4] A Yes sir It s been packaged into this bag
[5] and initialed by our office
[6] Q When you located that you were called to
[7] videotape that, is that correct?
[8] A That s correct
[9] Q Who was the officer?
[10] A Detective James Munson from the Lehi PD
[11] Q I apologize I didn t have that marked
[12] That was state s exhibit 9, for the record
[13] MR. COLE I move for admission of just the
[14] bottle just the one he s identified There s nothing
[15] in it except for residue
[16] MR. CARTER: With that understanding we
[17] have no objection
[18] THE COURT Nine will be received
[19] Q (BY MR COLE) What do we have indicated
[20] here?
[21] A It s a cup with a glass tube with burnt
[22] markings on the glass tube
[23] Q Do you know where that was located? I
[24] believe that s number 8 on your listing
[25] A That was located in the kitchen

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[1] Q I would ask you to look inside You ll
[2] notice inside of this bowl there are some kind of
[3] metal fragments Could you look at that and tell me
[4] what that is?
[5] A It s a real heavy gauge steel wool
[6] Q In light of your training and experience,
[7] what is that used for in this context?
[8] A In that context?
[9] Q Yes
[10] A It s similar to what we ve seen as far as
[11] other pipes The steel wool is used to hold rock
[12] cocaine while they smoke it The reason they use the
[13] heavy gauge steel wool is it can take the heat needed
[14] to be applied to the rock cocaine to be able to smoke
[15] it
[16] Q Can you just light cocaine on fire?
[17] A No
[18] Q What do you have to do in order to make
[19] sure it gives off the fumes?
[20] A You have to what we call "rock it up"
[21] Q Do you have to place fire on it?
[22] A Yes you do
[23] Q Do you have to place it on one, or does it
[24] have to be held continuously?
[25] A I don t know if it has to be lit up and

[1] Q Would you watch the video for me and
[2] indicate if it was located in the same place it was
[3] found or if it was moved?
[4] A That s the location it was found by officer
[5] Jensen of the American Fork police department.
[6] Q So it was in plain view; is that correct?
[7] A Yes, it was
[8] Q Let s take a look then -- you indicated
[9] this is in the kitchen area
[10] A Yeah, that s a china cupboard, or a
[11] cupboard there was some small cups on
[12] Q And that s the exact location this was
[13] found?
[14] A Yes
[15] Q And you were called over immediately?
[16] A Yes
[17] Q Would you take a look at exhibit # 10
[18] carefully, and tell me what you see there?
[19] A Like you see in the video, it s a sugar
[20] bowl with a glass apparatus in it that s similar to
[21] the ones we ve located before
[22] Q Does that have any burning or markings on
[23] it?
[24] A It s charred on the ends, the one end quite
[25] bad

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[1] stayed lit -- oh, you mean light it like a cigarette
[2] and it stays burning?
[3] Q Right
[4] A No You have to vaporize the rock of
[5] cocaine
[6] Q Does that heat have to be constant?
[7] A Yes
[8] MR. COLE Move for admission of this item
[9] as well There s also one small item we would remove.
[10] MR. CARTER: With that understanding I have
[11] no objection
[12] THE COURT It will be received
[13] MR. COLE I would like to publish this to
[14] the jury
[15] THE COURT Not with that extra thing in
[16] there
[17] MR. COLE Also I would indicate to the
[18] jury that has a glass item there and I would request
[19] that you don t move it around too much
[20] Q (BY MR COLE) Do you know what this item
[21] is located in the bottom corner that s tan colored?
[22] A A purse
[23] Q Did you watch as this purse was searched?
[24] A Yes
[25] Q Is this an accurate representation of that

[1] search?

[2] A Yes, sir

[3] Q Was the purse searched before this?

[4] A I believe it was

[5] Q What's this first item indicated? Do you

[6] know what that is?

[7] A Yeah Those are napkins, paper napkins

[8] from Circle K

[9] Q And what do we have found here?

[10] A Those are pen tubes

[11] Q In the context of drug usage, what do those

[12] indicate to you?

[13] A An individual will take the ink part, ball

[14] point pen part out of an ink tube, such as with a

[15] Papermate type pen, and usually then shorten it and

[16] use it for the inhalation of powder -- controlled

[17] substances

[18] Q Do you recall if those pens have been

[19] shortened; can you tell from the video?

[20] A I can't tell from the video whether or not

[21] they have

[22] Q Do you recall who the officer was that was

[23] searching the purse?

[24] A That was Detective Andre Leavitt

[25] Q He's removing an item here in the corner.

[1] do you know if there was any indication in the purse

[2] as to whose purse it was?

[3] A There was correspondence, mail, paperwork,

[4] like that, that was in there

[5] Q Is this the paperwork that was found at the

[6] time?

[7] A Yeah

[8] Q What name and address are on those?

[9] A Those are to Charis Eastmond I don't

[10] recall the address

[11] Q If I could get you to step down and tell us

[12] what you read off of that

[13] A Saratoga

[14] Q That would be the Saratoga resort?

[15] A Yes, sir

[16] Q Is that an accurate address?

[17] A Yes, it is

[18] Q Is that in fact the address she gave you at

[19] the time of her arrest?

[20] A I didn't talk with Ms Eastmond at the

[21] scene I didn't ask her any vitals other than what

[22] was on the video

[23] Q There are other items Are these also

[24] addressed to Charis Eastmond?

[25] A Yes

[1] Do you know what that was?

[2] A It's like a smaller pocketbook that went

[3] inside the purse

[4] Q Was that item retained for further search?

[5] A I believe it was

[6] Q After that was removed, we're other items

[7] removed? What is that item?

[8] A Another pill bottle

[9] Q What's this item?

[10] A A film cannister, 35 millimeter film

[11] cannister

[12] Q Why is that significant?

[13] A A film cannister for years has been a

[14] common method of storing -- people store controlled

[15] substances in them because they're airtight

[16] Q Do you know if this item was sent to the

[17] crime lab?

[18] A I believe it was

[19] Q That would be item 2 on the criminal

[20] report?

[21] A Yeah

[22] Q Do you know what the result was?

[23] A Looking on this crime lab report it says

[24] that cocaine residue was identified in the cannister

[25] Q Continuing on with the search of the purse,

[1] Q And they were all taken out of the purse?

[2] A Yes, they were

[3] Q We're almost done

[4] Did you have occasion to search the bedroom

[5] as well?

[6] A I did, yes, sir

[7] Q Excuse me That's one item I should ask

[8] you about You'll see an item removed to the

[9] left-hand side, a square item with some color on it --

[10] this item right here What is that?

[11] A Zigzag rolling papers

[12] Q What are Zigzag papers used for; is there a

[13] regular use for them?

[14] A Certainly

[15] Q What are they used for?

[16] A Rolling tobacco cigarettes

[17] Q What else?

[18] A Rolling marijuana cigarettes.

[19] Q Do you know if Charis Eastmond smokes?

[20] A I do not know that, sir

[21] Q What's displayed here?

[22] A It's a spoon and a hypodermic syringe

[23] These two items here I located myself between the

[24] mattress and box springs in the same bedroom

[25] Q You had removed previously another glass

[1] item, is that correct?

[2] A Yes sir

[3] Q What was that item taken?

[4] A It appeared to be a glass pipe or what

[5] we

[6] Q Now that syringe was separated out and kept

[7] with other syringes?

[8] A Yes sir as required by the state crime

[9] lab

[10] Q This is marked plaintiff's exhibit No 11

[11] Could you tell us what that is?

[12] A The spoon that was located -- and the glass

[13] tube, that was located between the box springs and the

[14] mattress

[15] Q Was the glass tube sent to the crime lab?

[16] A Yes it was

[17] Q It was marked as No 11 Is that accurate

[18] on your numbering system?

[19] A Yes

[20] Q And what does the lab report indicate?

[21] A Cocaine residue was found in the glass

[22] tube

[23] Q There wasn't a tremendous amount, was

[24] there?

[25] A No, sir, there wasn't

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[1] Q I call your attention to the evidence

[2] report again --

[3] THE COURT Are you through with the video?

[4] MR. COLE Yes your Honor

[5] THE COURT Why don't you go ahead and be

[6] seated at the table then

[7] MR. COLE I would move for admission of

[8] state's exhibit No 12

[9] THE COURT Any objection?

[10] MR. CARTER No

[11] THE COURT Twelve is received Did you

[12] wish to offer -- I believe it's 1 the tape?

[13] MR. COLE Yes your Honor at this time I

[14] think it's 1

[15] THE COURT Any objection to 1?

[16] MR. CARTER No

[17] THE COURT One will be received

[18] Q (BY MR. COLE) I'm showing you what's

[19] marked as state's exhibit No 13 Is that what was

[20] marked on the evidence piece as No 9?

[21] A Yes sir

[22] Q Did you find those items?

[23] A Yes sir

[24] Q Where did you find them?

[25] A On the nightstand in the same bedroom,

[1] Q Enough to be tested?

[2] A Yes, sir

[3] MR. COLE I move for admission of state's

[4] exhibit No 11

[5] MR. CARTER No objection

[6] THE COURT 11 is received

[7] MR. COLE I still also need this one

[8] marked This is being marked as exhibit No 12

[9] Q (BY MR. COLE) Are these the items found

[10] in the search of the purse?

[11] A Yes, they are

[12] Q In that item we find a piece of

[13] correspondence directed to Chans Eastmond?

[14] A Yes

[15] Q Do you also find the film canister located

[16] on the video?

[17] A Yes

[18] Q To your knowledge, are those the same

[19] items?

[20] A Yes, they are

[21] Q Now that was the last of what you

[22] videotaped in the home; is that correct?

[23] A That's correct

[24] Q Did you make further search yourself?

[25] A Yes, I did

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[1] south bedroom

[2] Q I'm showing you what's marked as state's

[3] exhibit 14 Was that found at the same time?

[4] A Yes, it was

[5] Q What is that?

[6] A It's a butane canister with a torch nozzle

[7] attached to the top

[8] Q Why is that significant?

[9] A As I stated before, methamphetamine and

[10] cocaine, they burn at higher temperature than say wood

[11] and paper A regular cigarette lighter or match

[12] doesn't produce enough heat to vaporize the cocaine or

[13] methamphetamine to the point the vapors can be

[14] inhaled You have to produce a hotter flame to

[15] vaporize these two controlled substances to be able to

[16] smoke them That's also why the glass pipe is being

[17] used

[18] Q Is the item in front of you consistent with

[19] drug use, in your experience?

[20] A Yes, it is

[21] Q Let me show you another item we'll have

[22] marked as State's Exhibit No 14, I believe it is

[23] Can you tell me what that is?

[24] A Yeah, a broken light bulb

[25] Q Is that marked as exhibit #10 on your

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[1] evidence report?

[2] A Yes

[3] Q Was it sent to the crime lab?

[4] A Yes, it was

[5] Q What was the result of that testing? That

[6] would be, as I understand it --

[7] MR CARTER: No. 11

[8] MR. COLE: Actually No. 10.

[9] THE WITNESS: On Number 10 methamphetamine

[10] was identified on the broken glass at the crime lab.

[11] Q So this was sent to the crime lab and they

[12] identified methamphetamine?

[13] A Yes It has the crime lab technician's

[14] initials on it

[15] MR. COLE: Your Honor, I move for admission

[16] of state's 13, 14, and 15.

[17] MR. CARTER: No objection.

[18] THE COURT: 13, 14 and 15 will be received.

[19] Q (BY MR. COLE) Let me show you what we're

[20] having marked as Exhibit 16. It would be No. 13 on

[21] the property report. What is that?

[22] A They're brass and stainless steel fittings,

[23] some sort of couplers and some ornate pipe fittings

[24] made out of brass.

[25] Q Do those have any significance as far as

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[1] drug use?

[2] A Yeah They're very similar in shape and

[3] size as to brass fittings used in the making of a

[4] marijuana pipe, making a marijuana bowl

[5] Q Is it your opinion those could be used in

[6] making drug paraphernalia?

[7] A Yes

[8] MR. COLE: Move for admission of state's 18

[9] as well.

[10] MR. CARTER: No objection.

[11] THE COURT: 18 will be received.

[12] Q (BY MR. COLE) I would like to call your

[13] attention, detective, to No. 21 on the property sheet.

[14] It indicates a syringe. Is that accurate?

[15] A Yes, sir

[16] Q Was that kept, do you know?

[17] A I believe it was I believe it was placed

[18] in the same container as the other two syringes.

[19] Q Where did you find this syringe?

[20] A In the fridge.

[21] Q Was it in plain view or hidden?

[22] A I don't recall. I don't recall where.

[23] Q Are there more than -- is there more than

[24] one fridge in the home?

[25] A No, sir

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[1] Q Was it located in the kitchen?

[2] A Yes, sir

[3] Q This is state's exhibit No. 17 It would

[4] be 24 on the property report. What is that?

[5] A It's a white -- looks like what used to be

[6] a small first aid kit and about an ounce size ball of

[7] heavy gauge steel wool

[8] Q Is that the same kind of steel wool found

[9] previously in the item of China?

[10] A Yes, it is

[11] Q Could you tell us where you found that?

[12] A That was found -- it was found in the

[13] drawer of the cabinets, the drawer in the kitchen.

[14] MR. COLE: Move admission of that.

[15] MR. CARTER: No objection.

[16] THE COURT: It will be received.

[17] Q (BY MR. COLE) This is No. 18. It's

[18] marked on your property list also as 18; is that

[19] correct?

[20] A Yes

[21] Q What is that?

[22] A Again, that's a small -- at one time a

[23] cylindrical tube of glass with some burnt residue on

[24] it.

[25] Q In your estimation what is that?

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[1] A A meth pipe.

[2] Q Why is it broken?

[3] A It's apparently got dropped or crushed.

[4] Q Is it likely that a pipe would break in

[5] use?

[6] A Not with that -- no, no, sir -- that heavy

[7] gauge of glass. That thickness of glass wouldn't

[8] break because of the temperature deviation of putting

[9] a flame to it.

[10] MR. COLE: Move for admission of 18.

[11] MR. CARTER: No objection.

[12] THE COURT: 18 is received.

[13] MR. COLE: That's all I have, your Honor.

[14] I would like to make sure which items have been

[15] offered and not received. I have nothing further.

[16] MR. CARTER: My cross will probably not

[17] take very long.

[18] THE COURT: Go ahead.

[19]

[20] CROSS-EXAMINATION

[21] BY MR. CARTER:

[22] Q Officer Johnston, who was the lead officer

[23] on this case?

[24] A I believe it was Detective Sam Liddiard, if

[25] I recall.

[1] Q It was not officer Gary Caldwell?

[2] A It may have been.

[3] Q Do you know who entered the house first?

[4] A The American Fork SWAT team.

[5] Q Who would that consist of?

[6] A I don't know them by name. I know

[7] Detective Liddiard is the team leader, and I don't

[8] know the other officer on there.

[9] Q Would officer Caldwell be involved with

[10] them?

[11] A I don't recall him being on the SWAT team

[12] that night. I recall him being in civilian clothes.

[13] I can't say for sure.

[14] Q All right. I was just looking on all these

[15] documents His name appears on the evidence report as

[16] the officer and on the lab report as well, correct?

[17] A Yes, sir, that is correct.

[18] Q You tell us that the Saratoga Resort was

[19] open for business last year?

[20] A I know it was open. I don't know -- that

[21] night it was not open for business.

[22] Q In fact, it was not open that day, was it?

[23] A As far as that day, I couldn't say. That

[24] night it was not. It was closed.

[25] Q And so it was not open to the public on

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[1] Q Another gentlemen was present at the house,

[2] was there not, another gentlemen there?

[3] A Present or --

[4] Q Yeah. Wasn't another person there?

[5] A No, sir, there wasn't.

[6] Q There wasn't a Michael Peterson there?

[7] A We found items addressed to Michael

[8] Peterson.

[9] Q Do you know who had lived in the house

[10] prior to Ms. Eastmond?

[11] A No, I do not.

[12] Q Do you know how many people had access to

[13] the house?

[14] A I do not. I don't know.

[15] Q Do you recognize the name of Shannon

[16] Eastmond?

[17] A I recognize the name. I've never met her.

[18] Q Do you recognize the name of Kerry or Bambi

[19] Fowler?

[20] A Yes, sir.

[21] Q Do you know if they had any association

[22] with that home?

[23] A I don't know if they had an association

[24] with that home.

[25] Q You're telling us there were just women's

[1] August 4th, 1994 -- August 3rd, excuse me, 1994?

[2] A At the time we went in, no, it was not.

[3] Q Why is the videotape started so late in the

[4] process? It does not reveal the search of

[5] Ms. Eastmond or her person Do you know why that

[6] would be?

[7] A Probably just procedural. When the SWAT

[8] team went in with Detective Liddiard they would search

[9] her immediately for any -- for just officers' safety

[10] purposes. And when Ms. Eastmond came under the scope

[11] of the warrant, therefore she could be searched. And

[12] what was recovered when the SWAT team went in I

[13] wouldn't have knowledge of it, wouldn't see it until I

[14] went in.

[15] Q For your own safety you did not enter

[16] initially when they made entrance?

[17] A That's correct.

[18] Q And you followed in sometime later with the

[19] video camera when it was safe?

[20] A Probably two, three minutes later.

[21] Q Obviously the search of her and her person

[22] was not videotaped?

[23] A No, sir, it wasn't.

[24] Q Do you know who searched her?

[25] A I can't say. I don't know.

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[1] clothing within that house?

[2] A What I would recall would be as the video

[3] showed. There were women's clothing hanging. There

[4] were items of women's perfume, jewelry, trinkets, and

[5] such like that.

[6] Q Were there any items located within the

[7] home which would identify a male as being present or

[8] living there?

[9] A There was -- I recovered a traffic ticket

[10] that was on the fridge. I booked it into evidence. I

[11] believe it's item 22, a traffic ticket addressed to

[12] Michael Peterson or written to Michael Peterson by the

[13] Lahi PD.

[14] Q Of these items videotaped here and

[15] demonstrated by you here, do you know which ones

[16] belonged to Ms. Eastmond or belonged to Shannon

[17] Eastmond or Bambi Fowler?

[18] A I don't know.

[19] MR. CARTER: Thank you. That's all.

[20]

[21] REDIRECT EXAMINATION

[22] BY MR. COLE:

[23] Q Is one particular officer required to do

[24] everything on a search warrant?

[25] A No, they are not.

[1] Q. ARE THERE PARTICULAR PORTIONS OF WARRANTS
[2] THAT ARE DONE BY THEMSELVES - WAS OFFICER CALDWELL
[3] THE ONLY ONE THAT ENTERED THE HOME AT THE TIME?
[4] A. NO, SIR
[5] Q. WHO, AS A GENERAL RULE, WOULD BE GOING WITH
[6] HIM?
[7] A. I DON'T UNDERSTAND YOUR QUESTION
[8] Q. WHEN THEY FIRST ENTERED THE HOME AND TOOK
[9] MS. EASTMOND INTO CUSTODY, DO YOU KNOW WHO WAS
[10] INVOLVED?
[11] A. LIKE I SAY, I KNOW THAT DETECTIVE SAM
[12] LIDDIARD WAS INVOLVED. HE WAS OVER THE SWAT TEAM THAT
[13] NIGHT IN CHARGE OF THEM, AND THAT'S THE ONLY ONE I
[14] KNOW OF.
[15] Q. SO NO PERSON WAS BY THEMSELVES?
[16] A. OH, NO, SIR.
[17] Q. OFFICER CALDWELL WASN'T INVOLVED IN
[18] SEARCHING THE PURSE, WAS HE?
[19] A. I DON'T KNOW THAT.
[20] Q. WAS HE INVOLVED IN SEARCHING THE HOME AT
[21] ALL?
[22] A. NO. THE PERSON ON THE VIDEO WAS ANDRE
[23] LEAVITT.
[24] Q. SO OFFICER CALDWELL WAS NOT INVOLVED IN
[25] THAT SEARCH?

[1] A. NOT AT THE FIRST, NO.
[2] Q. ON THIS ITEM THAT COUNSEL HAS INDICATED IS
[3] THE TICKET TO MICHAEL PETERSON, COULD I GET YOU TO
[4] PULL THAT OUT AND TELL ME THE ADDRESS ON IT?
[5] A. THIS IS A TRAFFIC VIOLATION FOR NO
[6] INSURANCE. IT WAS WRITTEN ON JUNE 18, 1994, TO
[7] MICHAEL LOREN PETERSON. ADDRESS GIVEN IS 4478 WEST
[8] 5413 - I'M ASSUMING SOUTH BECAUSE IT'S IN KEARNS,
[9] UTAH.
[10] Q. THAT'S NOT THE SARATOGA ADDRESS, IS IT?
[11] A. NO, SIR.
[12] Q. AND THIS WAS ABOUT A MONTH AND A HALF
[13] BEFORE THIS INCIDENT?
[14] A. YES, SIR.
[15] MR. COLE: NOTHING FURTHER.
[16]
[17] RECROSS-EXAMINATION
[18] BY MR. CARTER:
[19] Q. WHEN YOU VIDEOTAPED THE PURSE BEING
[20] SEARCHED, OFFICER CALDWELL WAS IN THAT LOCATION; WAS
[21] HE NOT?
[22] A. I DON'T RECALL OFFICER CALDWELL BEING
[23] THERE. I REMEMBER DETECTIVE LEAVITT WAS THERE.
[24] Q. DID YOU TAKE THE TIME AND OPPORTUNITY TO
[25] CHECK OUT WHOSE NAMES THE UTILITIES WERE LISTED IN FOR

[1] THE SARATOGA RESIDENCE?
[2] A. NO, SIR, I DIDN'T.
[3] Q. SO YOU WOULDN'T KNOW IF THEY WERE MICHAEL
[4] PETERSON'S NAME WAS USED TO ACCEPT THOSE UTILITIES?
[5] A. I WOULDN'T KNOW, SIR.
[6] MR. CARTER: NOTHING FURTHER.
[7] THE COURT: YOU MAY STEP DOWN. MAY THE
[8] WITNESS BE EXCUSED?
[9] MR. CARTER: NO OBJECTION.
[10] THE COURT: WE'RE GOING TO RECESS NOW UNTIL
[11] 1:30. AND DURING THIS TIME I WOULD ASK THAT THE JURY
[12] NOT DISCUSS THIS CASE AMONGST YOURSELVES NOR PERMIT
[13] ANYONE ELSE TO DISCUSS THE CASE WITH YOU. AND HAVE NO
[14] CONVERSATION ON ANY TOPIC WITH THE ATTORNEYS, PARTIES
[15] OR WITNESSES. AND WE'LL BE IN RECESS UNTIL 1:30.
[16] (NOON RECESS HELD)
[17] THE COURT: THE RECORD MAY SHOW THE JURY IS
[18] ALL PRESENT, THAT COUNSEL FOR THE STATE AND COUNSEL
[19] FOR THE DEFENDANT AND THE DEFENDANT ARE PRESENT. AND
[20] YOU MAY CALL YOUR NEXT WITNESS.
[21] MR. COLE: WE CALL LEE FOX TO THE STAND.
[22] THE COURT: IF YOU'LL RAISE YOUR
[23] RIGHT-HAND, THE CLERK WILL ADMINISTER THE OATH.
[24] ""
[25] ""

[1] LEE FOX
[2] CALLED AS A WITNESS HEREIN, HAVING BEEN DULY
[3] SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:
[4]
[5] THE COURT: BE SEATED IN THE WITNESS CHAIR,
[6] PLEASE.
[7]
[8] DIRECT EXAMINATION
[9] BY MR. COLE:
[10] Q. COULD YOU TELL US YOUR NAME FOR THE RECORD,
[11] PLEASE?
[12] A. LEE FOX.
[13] Q. WHAT'S YOUR PRESENT ASSIGNMENT?
[14] A. I'M PRESENTLY EMPLOYED BY THE UTAH COUNTY
[15] SHERIFFS DEPARTMENT ASSIGNED AS THE FIELD DIRECTOR FOR
[16] THE UTAH COUNTY NARCOTICS ENFORCEMENT TASK FORCE.
[17] Q. HOW LONG HAVE YOU HAD THAT POSITION?
[18] A. I'VE BEEN A POLICE OFFICER FOR
[19] APPROXIMATELY 23 YEARS, AND AFFILIATED WITH THE TASK
[20] FORCE FOR A LITTLE OVER FIVE YEARS.
[21] Q. IN CONJUNCTION WITH YOUR WORK THERE AT THE
[22] TASK FORCE HAVE YOU RECEIVED SOME DIRECT TRAINING?
[23] A. YES, I HAVE.
[24] Q. WOULD YOU GIVE US A THUMBNAIL SKETCH OF
[25] THAT TRAINING?

[1] A I RECEIVED BASIC TRAINING AT THE UTAH
 [2] POLICE ACADEMY BACK IN 1973. SINCE THEN I'VE RECEIVED
 [3] IN-HOUSE TRAINING THROUGH THE SHERIFF'S DEPARTMENT ON
 [4] THE JOB TRAINING, AND THEN A VARIETY OF SCHOOLS PUT ON
 [5] BY A VARIETY OF DIFFERENT AGENCIES, SUCH AS ALCOHOL
 [6] TOBACCO AND FIREARMS, DRUG ENFORCEMENT ADMINISTRATION,
 [7] UTAH DRUG ACADEMY - UTAH STATE DRUG ACADEMY, HARRISON
 [8] ASSOCIATES DRUG TRAINING, RELATED DRUG CLASSES; JUST
 [9] NUMEROUS ONES - IT WOULD TAKE ME QUITE AWHILE TO LIST
 [10] THEM ALL.

[11] Q YOU WERE HERE DURING THE TESTIMONY OF
 [12] OFFICER JOHNSON; IS THAT CORRECT?

[13] A THAT'S CORRECT.

[14] Q DID YOU ASSIST IN THAT SEARCH WARRANT THAT
 [15] WAS TALKED ABOUT THERE?

[16] A YES, I DID.

[17] Q WHAT WAS YOUR DUTY AT THAT TIME?

[18] A MY DUTY WAS TO HELP - TO PARTICIPATE IN
 [19] THE LOGGING AND COLLECTION OF THE EVIDENCE.

[20] Q WOULD YOU EXPLAIN BRIEFLY HOW THE NARCOTICS
 [21] ENFORCEMENT TASK FORCE HANDLES A SCENE WHEN THEY DO A
 [22] SEARCH WARRANT.

[23] A YES. USUALLY WE HAVE AN ENTRY TEAM WHICH
 [24] WILL ENTER THE HOME, DEPENDING UPON WHICH TYPE OF A
 [25] SEARCH WARRANT IT IS. AFTER THE HOME IS SECURED AND

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[1] IT'S SAFE TO ENTER. USUALLY THE REST OF THE TEAM WILL
 [2] ENTER. ON THIS PARTICULAR OCCASION I WAS WITH THE
 [3] SECONDARY ENTRY AFTER THE HOME WAS SECURED.

[4] Q AFTER YOU ENTERED THE HOME DID YOU SET UP A
 [5] PARTICULAR LOCATION FOR EVIDENCE?

[6] A YES, I DID.

[7] Q HOW EXACTLY DID YOU DO IT; WHAT IS THE
 [8] PROCEDURE?

[9] A IN THIS PARTICULAR SITUATION MYSELF AND
 [10] RUSS FULLER PARTICIPATED IN MARKING, PACKAGING AND
 [11] LOGGING ALL OF THE EVIDENCE. WE SET UP A STATION IN
 [12] THE KITCHEN ON THE KITCHEN TABLE. FROM THAT POSITION
 [13] THE OTHER OFFICERS INVOLVED IN THE SEARCH WOULD BRING
 [14] THEIR - THE ITEMS THAT THEY HAD FOUND TO OUR LOCATION
 [15] AND EXPLAIN WHERE THEY HAD FOUND THAT ITEM. I WOULD
 [16] PACKAGE IT IN A BAG AND ASSIGN A NUMBER TO IT, PUT MY
 [17] INITIALS, ETC., ON THE PACKAGING MATERIAL, SEAL IT UP,
 [18] AND THEN DICTATE TO SERGEANT FULLER, WHO WAS ACTING AS
 [19] SCRIBE, WHAT THE ITEM WAS AND WHERE IT WAS FOUND.

[20] Q SO EXHIBIT NO. 3, THE EVIDENCE LIST WAS
 [21] GENERATED BY YOU AND SERGEANT FULLER?

[22] A YES. I DICTATED THE INFORMATION TO HIM AND
 [23] HE WROTE IT DOWN BY HAND.

[24] Q AND YOU SENT SOME OF THOSE ITEMS TO THE
 [25] CRIME LAB; IS THAT CORRECT?

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[1] A I CAUSED THEM TO BE SENT TO THE CRIME LAB.
 [2] Q AND THE CRIME LAB REPORT IS EXHIBIT NO. 2.
 [3] ISN'T IT, IN THIS CASE?

[4] A THAT'S CORRECT

[5] Q AND THAT'S THE REPORT YOU RECEIVED FROM THE
 [6] CRIME LAB?

[7] A YES.

[8] Q ON THIS PARTICULAR ITEM - I HAVE JUST A
 [9] FEW ITEMS I WOULD LIKE TO SHOW YOU AND ASK YOU ABOUT.
 [10] THIS IS STATE'S EXHIBIT NO. 4. DO YOU RECOGNIZE THAT?

[11] A YES, I DO.

[12] Q WHAT IS THAT?

[13] A THIS IS A - ITEM NUMBER 1 ON THE PROPERTY
 [14] REPORT FORM, WHICH IS - WHICH LISTS AN AMBER VIAL
 [15] WITH WHITE RESIDUE.

[16] Q IS THAT IN A SLIGHTLY DIFFERENT CONDITION
 [17] THAN WHEN YOU SAW IT ORIGINALLY?

[18] A YES, IT IS.

[19] Q WHY IS THAT?

[20] A ORIGINALLY WHEN I FIRST OBSERVED THIS ITEM
 [21] OF EVIDENCE, AS YOU WOULD HOLD IT UP TO THE LIGHT, I
 [22] BELIEVE YOU COULD SEE SOME SUBSTANCE IN THERE, MORE SO
 [23] THAN WHAT YOU SEE IN THERE NOW.

[24] Q HOW WOULD YOU ACCOUNT FOR THE DISCREPANCY;
 [25] HOW MUCH THERE IS THERE NOW AND HOW MUCH THERE WAS AT

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[1] THE TIME?

[2] A ACCORDING TO THE CRIME LAB REPORT THIS ITEM
 [3] WAS TESTED AND A PORTION OF THE MATERIAL WAS REMOVED
 [4] FROM THE ITEM AND TESTED AT THE LAB. AND IT SHOWED
 [5] THAT IT DID TEST FOR COCAINE.

[6] Q SO THE TESTING PROCESS DOES DESTROY SOME OF
 [7] THE MATERIAL?

[8] A THAT'S CORRECT.

[9] Q LET ME SHOW YOU WHAT'S MARKED AS STATE'S
 [10] EXHIBIT NO. 10. DO YOU RECOGNIZE THAT AS WELL?

[11] A YES, I DO.

[12] Q WOULD YOU GIVE US YOUR OPINION AS TO WHAT
 [13] THAT'S USED FOR?

[14] A WELL, THE GLASS TUBE PIPE APPARATUS IN THIS
 [15] BOWL, IT'S MY OPINION THIS TYPE OF AN ITEM WOULD BE
 [16] USED TO INJECT OR SMOKE EITHER COCAINE OR
 [17] METHAMPHETAMINE.

[18] Q THIS IS ITEM NO. 14 I'M SHOWING YOU. WOULD
 [19] THAT HAVE ANY SIGNIFICANCE WITH THE GLASS TUBE FOUND
 [20] IN EXHIBIT 10?

[21] A YES, IT WOULD.

[22] Q WOULD YOU EXPLAIN HOW THAT WOULD BE USED TO
 [23] INJECT COCAINE?

[24] A WELL, NORMALLY - I DON'T KNOW IF YOU CAN
 [25] SEE FROM YOUR POSITION, BUT IN THIS PIPE THERE'S A

- [1] BOWL AND IN THE BOWL THE BOWL HAS BEEN PACKED WITH
 [2] SOME SHREDDED BRASS OR STEEL. TYPICALLY A PERSON WHO
 [3] IS GOING TO INJECT ONE OF THESE CONTROLLED SUBSTANCES
 [4] WILL PUT THAT SUBSTANCE IN THE TOP AND APPLY A
 [5] CONSTANT FLAME TO IT YOUR CRYSTALLIZED
 [6] METHAMPHETAMINE OR COCAINE REFERRED TO AS ROCK
 [7] COCAINE IS A SOLID SUBSTANCE AND IT DOESN'T BURN
 [8] LIKE TOBACCO IT'S LIKE A ROCK LIKE ROCK SALT WHEN
 [9] YOU PUT THAT ON THERE YOU NEED TO APPLY A STEADY HEAT
 [10] TO VAPORIZE THAT SUBSTANCE. AND THEN THE VAPOR IS
 [11] SUCKED THROUGH THE BOTTOM HERE THE BOTTOM TUBE AND
 [12] INTO YOUR MOUTH AND INHALED AS YOU WOULD SMOKE A PIPE
 [13] OR A CIGARETTE.
 [14] Q. WOULD SOMETHING LIKE STATE'S EXHIBIT 14 BE
 [15] USED FOR THAT PURPOSE?
 [16] A. YES IT'S VERY COMMON TO FIND THAT TYPE OF
 [17] A PROPANE TORCH WITH THESE TYPE OF ITEMS
 [18] Q. WHY WOULD YOU USE PROPANE?
 [19] A. I IMAGINE THE CONVENIENCE WITH THE WAY IT'S
 [20] SOLD IN SMALL CYLINDERS WE SEE THAT TYPE AND SMALLER
 [21] ONES USED
 [22] Q. NOW ITEM 10 IS BROKEN ON THE END IS THAT
 [23] A COMMON OCCURRENCE?
 [24] A. WE FIND -- IT'S VERY COMMON YES
 [25] Q. WHY IS THAT?

- [1] A. I BELIEVE THE HEAT CAUSES SOME OF THE GLASS
 [2] PRODUCTS TO BREAK.
 [3] Q. I'M GOING TO SHOW YOU WHAT'S MARKED AS
 [4] STATE'S EXHIBIT 15 A LIGHT BULB WHAT DO YOU NOTICE
 [5] THAT'S UNUSUAL ABOUT THIS LIGHT BULB?
 [6] A. WELL THIS IS VERY SIMILAR TO LIGHT BULBS
 [7] WE OFTENTIMES FIND WHERE DRUGS ARE BEING INJECTED
 [8] WHAT IS PECULIAR ABOUT IT IS THE STEM AND THE GUTS OUT
 [9] OF THE LIGHT BULB HAVE BEEN REMOVED FROM THE END
 [10] MAKING IT HOLLOW ONCE THOSE THINGS HAVE BEEN REMOVED
 [11] A SUBSTANCE CAN BE PLACED INSIDE THERE CRYSTALLINE
 [12] SUBSTANCE HEAT APPLIED TO THE BOTTOM AND AGAIN BE
 [13] USED AS A PIPE TO SUCK THE VAPOR OUT OF THAT ITEM AND
 [14] INJECT IT INTO YOUR LUNGS
 [15] Q. THIS ITEM WAS SENT TO THE LAB IS THAT
 [16] CORRECT?
 [17] A. THAT'S CORRECT
 [18] Q. THAT WOULD BE 10 ON THE ORIGINAL LIST AND
 [19] 10 ON THE LAB REPORT?
 [20] A. YES
 [21] Q. WAS THERE ANY SUBSTANCE FOUND BY THE LAB?
 [22] A. YES THE LAB REPORT INDICATES THAT
 [23] METHAMPHETAMINE RESIDUE WAS IDENTIFIED IN THE BROKEN
 [24] LIGHT BULB VISUALLY YOU CAN ALSO SEE A
 [25] DISCOLORATION OF BROWNSH AMBER COLOR DISCOLORED

- [1] THROUGH THAT
 [2] Q. IS THIS DEVICE CONSISTENT WITH SOMETHING
 [3] YOU WOULD USE TO INJECT METHAMPHETAMINE?
 [4] A. YES
 [5] Q. CAN YOU RECALL WHERE THAT WAS FOUND?
 [6] A. IF I COULD REFER --
 [7] Q. IT'S NO 10 ON THE EVIDENCE LIST
 [8] A. YES THE LIGHT BULB AND PROPANE TORCH WERE
 [9] FOUND ON THE SOUTH SIDE IN THE BEDROOM BY DETECTIVE
 [10] JOHNSON
 [11] Q. I WOULD LIKE TO SHOW YOU NOW WHAT'S MARKED
 [12] AS STATE'S EXHIBIT NO 6 ONE OF THE OBJECTS WAS
 [13] PREVIOUSLY IDENTIFIED AS BEING FOUND BY HIM COULD
 [14] YOU IDENTIFY WHAT'S IN THAT PACK?
 [15] A. THERE ARE THREE DIFFERENT SYRINGES IN THIS
 [16] PROTECTIVE CONTAINER ITEM 4 11 AND 21 ON OUR
 [17] PROPERTY REPORT FORM
 [18] ITEM 4 -- 4A THAT IS A SYRINGE FOUND IN
 [19] THE NIGHTSTAND ALSO IN THE SOUTH BEDROOM
 [20] Q. IS THAT THE BLUE ONE THAT WAS SEEN ON THE
 [21] VIDEOTAPE?
 [22] A. I DO NOT --
 [23] Q. YOU COULDN'T SEE IT?
 [24] A. I COULDN'T SEE THE VIDEO
 [25] Q. DOES THAT INCLUDE NO 11 BY YOUR MARKINGS?

- [1] A. YES NO 11 IS A SYRINGE FOUND IN THE
 [2] MATTRESS IN THAT SAME BEDROOM
 [3] Q. THAT IS ONE OF THE ONES DENTON JOHNSON
 [4] TESTIFIED TO?
 [5] A. THAT'S RIGHT
 [6] Q. THE LAST ONE IS WHICH ONE?
 [7] A. NO 21 WHICH WAS A SYRINGE FOUND IN THE
 [8] REFRIGERATOR IN THE KITCHEN
 [9] Q. AND HE BROUGHT THAT TO YOU WHEN HE FOUND
 [10] IT?
 [11] A. YES
 [12] MR. COLE I MOVE FOR ADMISSION OF
 [13] PLAINTIFF'S EXHIBIT NO 6
 [14] MR. CARTER NO OBJECTION
 [15] THE COURT SIX IS RECEIVED
 [16] MR. COLE I HAVE A FEW OTHER ITEMS I WOULD
 [17] LIKE TO ASK YOU ABOUT COULD I HAVE THIS MARKED?
 [18] Q. (BY MR. COLE) THIS IS MARKED AS STATE'S
 [19] EXHIBIT NO 20 DO YOU KNOW WHAT THAT IS?
 [20] A. YES I DO
 [21] Q. IS THAT INDICATED ON THE PROPERTY REPORT?
 [22] A. YES IT IS
 [23] Q. DO YOU KNOW WHICH NUMBER THAT WAS?
 [24] A. THAT WOULD BE ITEM NO 15
 [25] Q. COULD YOU OPEN THAT UP FOR US PLEASE.

[1] A YES DO YOU WANT ME TO OPEN THIS?
 [2] Q I DIDNT - IF YOU COULD THIS WAS FOUND
 [3] INSIDE THE LARGER PURSE ON THE VIDEO?
 [4] A YES
 [5] Q FIRST I WOULD LIKE YOU TO REMOVE THE
 [6] SECTION THAT HAS PHOTOGRAPHS IN IT RIGHT THERE, IF YOU
 [7] COULD COULD YOU TELL US IF YOU RECOGNIZE THAT FIRST
 [8] PHOTOGRAPH?
 [9] A I BELIEVE THAT S THE DEFENDANT IN THIS
 [10] CASE.
 [11] Q WITH SOMEONE ELSE, IS THAT TRUE?
 [12] A YES
 [13] Q THANK YOU YOU CAN PUT THAT BACK INSIDE IF
 [14] YOU LIKE
 [15] WERE ANY OTHER ITEMS FOUND WITHIN -
 [16] A THE PURSE?
 [17] Q YEAH TELL ME ABOUT THESE OTHER ITEMS
 [18] A WE HAVE A SOCIAL SECURITY CARD WHICH BEARS
 [19] THE DEFENDANT'S NAME IN THIS CASE, CHARIS EASTMOND
 [20] ALSO A FISHING LICENSE, 1992 FISHING LICENSE WHICH
 [21] ALSO BEARS THE DEFENDANT'S NAME, CHARIS EASTMOND, AND
 [22] THE SARATOGA RESORT'S ADDRESS
 [23] Q ARE YOU FAMILIAR WITH HER ORIGINAL MAIDEN
 [24] NAME?
 [25] A I AM NOT

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[1] Q THAT S SUFFICIENT YOU CAN PUT THE REST
 [2] BACK INSIDE IF YOU WOULD LIKE
 [3] IS THERE AN ADDITIONAL COMPARTMENT YOU CAN
 [4] SEE?
 [5] A YES
 [6] Q WOULD YOU OPEN THAT UP AND TELL US WHAT YOU
 [7] FOUND INSIDE THAT S THE ZIPPERED COMPARTMENT?
 [8] A YES IT IS A ZIPPERED COMPARTMENT AND
 [9] INSIDE THAT COMPARTMENT WAS A GREEN, LEAFY MATERIAL
 [10] SIMILAR IN APPEARANCE TO FRAGMENTS OF MARIJUANA.
 [11] Q WAS THAT SENT TO THE CRIME LAB?
 [12] A YES, IT WAS
 [13] Q WHAT WAS THE TEST RESULT?
 [14] A ACCORDING TO THE STATE CRIME LAB, ITEM
 [15] NO 15, MARIJUANA LEAF FRAGMENTS WERE IDENTIFIED IN
 [16] THE PURSE.
 [17] Q SO THAT WAS ACTUALLY SENT TO THE CRIME LAB
 [18] AND THEY IDENTIFIED MARIJUANA FRAGMENTS DID THEY USE
 [19] UP SOME OF THE FRAGMENTS IN DOING THAT?
 [20] A YES THEY ALWAYS DO
 [21] Q ARE THERE VISIBLE FRAGMENTS THERE?
 [22] A YOU CAN STILL SEE A SMALL AMOUNT OF LEAFY
 [23] MATERIAL THERE.
 [24] Q IS THAT GIVING OFF ANY PARTICULAR ODOR?
 [25] A I'VE HAD A COLD THE LAST WEEK. I REALLY

[1] CANT SMELL ANYTHING.
 [2] Q WOULD YOU CLOSE THAT FOR US, PLEASE
 [3] I WOULD LIKE TO SHOW YOU WHAT'S MARKED AS
 [4] STATE'S EXHIBIT 21 COULD YOU TELL US WHAT THAT IS
 [5] A YES, THAT'S A BIOHAZARD CONTAINER, WHICH WE
 [6] USE TO STORE USED SYRINGES
 [7] Q WHAT DID YOU PUT INSIDE THERE?
 [8] A SYRINGES
 [9] Q WERE THOSE SYRINGES FOUND IN THE HOME?
 [10] A YES
 [11] Q HAD THEY BEEN USED?
 [12] A IT APPEARED THAT SOME OF THEM HAD BEEN
 [13] USED, YES
 [14] Q IN DOING SO, DO YOU DIFFERENTIATE WHEN
 [15] THEY'RE FOUND WHERE THEY WERE FOUND?
 [16] A USUALLY WE PUT THEM IN A PROTECTIVE
 [17] CONTAINER BECAUSE THE STATE CRIME LAB AS A POLICY THEY
 [18] WILL NOT ANALYZE THEM BECAUSE OF THE HAZARD IN
 [19] ANALYZING USED SYRINGES
 [20] Q BUT THOSE CAME OUT OF THE HOME?
 [21] A YES
 [22] Q DID YOU IDENTIFY ANY OF THE OTHER TWO FOUND
 [23] IN EXHIBIT 8?
 [24] A YES
 [25] Q WHERE AND WHEN?

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[1] A AS I WAS FINISHING MY DUTIES IN THE
 [2] EVIDENCE COLLECTION AREA I LOOKED AROUND IN THE
 [3] KITCHEN WHERE OUR EVIDENCE STATION WAS LOCATED, AND I
 [4] NOTICED THERE WAS A SYRINGE UP ABOVE ON THE - IT WAS
 [5] EITHER ON TOP OF THE KITCHEN CABINET OR A BEAM, OPEN
 [6] EXPOSED BEAM IN THE CEILING, WHICH WAS ABOVE THE
 [7] KITCHEN AREA THERE OR IMMEDIATELY ADJACENT TO IT
 [8] Q COULD I GET YOU TO COME DOWN HERE AND
 [9] IDENTIFY SOMETHING NOT ORIGINALLY ON YOUR REPORT
 [10] NO 25 AND SEE IF YOU CAN FIND IT THIS
 [11] IS STATE'S EXHIBIT 22 DO YOU RECOGNIZE THAT?
 [12] A YES, I DO
 [13] Q BASED UPON YOUR EXPERIENCE AS A POLICE
 [14] OFFICER AND NARCOTICS ENFORCEMENT OFFICER, WHAT DO YOU
 [15] BELIEVE THAT CONTAINS?
 [16] A I BELIEVE IT CONTAINS MARIJUANA SEEDS
 [17] Q ARE THEY DISTINCTIVE IN COLOR AND SHAPE?
 [18] A YES I'VE SEEN PROBABLY THOUSANDS OF THEM,
 [19] AND THEY HAVE A PECULIAR - VERY DISTINCT SHAPE AND
 [20] APPEARANCE.
 [21] Q HOW ABOUT THE SIZE, IS THAT UNUSUAL?
 [22] A THEY'RE USUALLY PRETTY MUCH THE SAME SIZE.
 [23] Q OKAY WHERE WAS THAT LOCATED IN THE HOUSE?
 [24] A NO 25 WAS FOUND UNDER THE COFFEE TABLE IN
 [25] THE LIVING ROOM

[1] Q. IS IT UNUSUAL TO FIND SEEDS SCATTERED
 [2] TOGETHER IN THIS PARTICULAR MANNER?
 [3] A. NO IT'S NOT UNUSUAL.
 [4] Q. WHY DO PEOPLE GATHER THEM, IN LIGHT OF YOUR
 [5] EXPERIENCE?
 [6] A. USUALLY WHEN A PERSON PURCHASES A SMALL BAG
 [7] OF MARIJUANA THERE WILL BE SOME SEED MATERIAL IN
 [8] THERE. IT DOESN'T SMOKE. AND THEY USUALLY DON'T ROLL
 [9] THOSE UP IN THEIR CIGARETTES OR PACK THEM IN THEIR
 [10] PIPES. THEY USUALLY CLEAN THAT TYPE OF SUBSTANCE OUT
 [11] OF THE MARIJUANA. AND OFTENTIMES, FOR WHATEVER
 [12] REASON, PEOPLE LIKE TO SAVE THEM AS THEY CLEAN THEM
 [13] FROM THE MARIJUANA FROM THE MARIJUANA THAT THEY USE.
 [14] Q. ARE YOU FAMILIAR WITH THE AREA AROUND
 [15] SARATOGA - YOU'VE WORKED IN THAT AREA?
 [16] A. I'M FAMILIAR WITH THE AREA.
 [17] Q. DO YOU KNOW HOW LONG THE DEFENDANT HAS
 [18] LIVED AT THAT ADDRESS?
 [19] A. I HAVE RECOLLECTIONS THAT GO BACK EIGHT TO
 [20] 10 YEARS AGO WHERE SHE WAS LIVING IN THE SARATOGA
 [21] RESORT.
 [22] Q. DO YOU KNOW WHO ORIGINALLY OWNED SARATOGA?
 [23] A. I DON'T. I BELIEVE IT WAS HER RELATIVES.
 [24] MR. COLE: I MOVE FOR ADMISSION OF EXHIBIT
 [25] 20 AND 22.

[1] MR. CARTER: NO OBJECTION
 [2] THE COURT. THEY'LL BE RECEIVED.
 [3] MR. COLE. THAT'S ALL I HAVE, JUDGE.
 [4] THE COURT. YOU MAY CROSS-EXAMINE.
 [5]
 [6] CROSS-EXAMINATION
 [7] BY MR. CARTER:
 [8] Q. OFFICER FOX, DID YOU TAKE ANY OCCASION TO
 [9] DO ANY FINGERPRINTING OF THIS MATERIAL?
 [10] A. NO. I DID NOT.
 [11] Q. A LOOK AT THE LAB REPORT SUGGESTS WHAT THEY
 [12] FOUND ON NUMBER 1 - DO YOU HAVE THAT WITH YOU?
 [13] MR. COLE: IT'S OVER HERE.
 [14] THE WITNESS. THE LAB REPORT?
 [15] Q. (BY MR. CARTER) IT SAYS "COCAINE RESIDUE
 [16] WAS IDENTIFIED IN AMBER VIAL." DO YOU SEE THAT, NO.
 [17] 1?
 [18] A. THAT'S CORRECT.
 [19] Q. SO I'M SUSPECTING - YOU SAY YOU CAUSED
 [20] THIS TO BE SENT UP TO THE CRIME LAB, CORRECT?
 [21] A. THAT'S CORRECT.
 [22] Q. ALTHOUGH IT WAS SUBMITTED BY OFFICER
 [23] CALDWELL?
 [24] A. NO, I BELIEVE IT WAS TAKEN - SUBMITTED TO
 [25] THE CRIME LAB BY OFFICER LEAVITT.

[1] Q. I'M JUST LOOKING AT THE DOCUMENT ITSELF
 [2] IT SAYS "SUBMITTED BY CALDWELL."
 [3] A. I'M LOOKING AT THE DOCUMENT ITSELF, AND IT
 [4] SAYS "DELIVERED TO THE CRIME LAB BY OFFICER LEAVITT."
 [5] Q. IF YOU GO TWO LINES ABOVE THAT, WHO DOES IT
 [6] SAY IT WAS SUBMITTED BY?
 [7] A. THE CASE - IT INDICATES THAT THE CASE WAS
 [8] SUBMITTED BY CALDWELL.
 [9] Q. OKAY. VERY GOOD. THEN GO DOWN TO NO. 1,
 [10] "COCAINE RESIDUE WAS IDENTIFIED IN AMBER VIAL." IS IT
 [11] YOUR SUGGESTION THAT THERE WAS MORE THAN JUST RESIDUE
 [12] IN THIS AMBER VIAL?
 [13] A. WELL, WHAT'S YOUR DEFINITION OF RESIDUE?
 [14] Q. I'M USING WHAT THE CRIME LAB SAYS. DO YOU
 [15] DIFFER WITH THEIR ANALYSIS IT WAS RESIDUE IN THIS
 [16] AMBER VIAL?
 [17] A. WELL, I'M - I STATED WHEN THE CRIME LAB
 [18] SAID - AND AS FAR AS THE PORTION THEY REMOVED FROM
 [19] THE CRIME LAB, I DID NOT MEASURE THAT. THEY DID
 [20] REMOVE SOMETHING FROM THE AMBER VIAL IN ORDER TO TEST
 [21] IT.
 [22] Q. CORRECT. AND THEY DEFINED THAT TO BE
 [23] RESIDUE, DID THEY NOT?
 [24] A. THEY HAVE SAID COCAINE RESIDUE WAS
 [25] IDENTIFIED IN THE AMBER VIAL.

[1] Q. IF THERE WAS SOME FREE SUBSTANCE IN THAT
 [2] AMBER VIAL THEY WOULD HAVE NOTED THAT IN THE REPORT;
 [3] WOULD THEY NOT?
 [4] A. I THINK THEY DID NOTE IT ON THE REPORT.
 [5] Q. IT SAYS COCAINE RESIDUE?
 [6] A. YES. THEY HAVE TO TAKE SOME OUT OF THE
 [7] CONTAINER TO TEST IT. AND I TESTIFIED WHEN I LOOKED
 [8] THROUGH THE CONTAINER WHEN I FIRST LOGGED IT INTO
 [9] EVIDENCE, YOU COULD SEE SOME IN THE BOTTOM OF THE
 [10] VIAL.
 [11] Q. YOU COULD SEE SOME RESIDUE?
 [12] A. YES - YOU COULD SEE SOME MATERIAL IN
 [13] THERE. I DON'T KNOW WHETHER TO CALL IT A QUANTITY OR
 [14] RESIDUE. THERE WAS OBVIOUSLY SOME COCAINE IN THAT
 [15] VILE.
 [16] Q. ALL RIGHT. DID YOU NOTE THAT OVER THIS
 [17] PAST EIGHT TO 10 YEARS YOU'VE WITNESSED MS. EASTMOND
 [18] LIVING AT THAT RESIDENCE AT SARATOGA, IF ANYBODY ELSE
 [19] LIVED THERE?
 [20] A. YES. I BELIEVE OTHER PEOPLE LIVED THERE.
 [21] Q. ALL RIGHT. AND IS IT YOUR TESTIMONY THAT
 [22] SHE LIVED THERE CONTINUOUSLY FOR THAT EIGHT TO 10
 [23] YEARS?
 [24] A. I DON'T KNOW IF SHE LIVED THERE
 [25] CONTINUOUSLY OR NOT.

[1] Q. DO YOU KNOW WHO SHANNON EASTMOND IS?

[2] A. SHANNON?

[3] Q. YES

[4] A. I'VE HEARD THE NAME. I CAN'T SAY THAT I

[5] KNOW HER.

[6] Q. DO YOU KNOW IF SHE LIVED THERE?

[7] A. I DON'T KNOW

[8] Q. DO YOU KNOW OF A KAMBI OR BAMBI FOWLER WHO

[9] WERE ASSOCIATED WITH THAT RESIDENCE?

[10] A. I COULDN'T SAY

[11] Q. DO YOU KNOW WHO THEY ARE?

[12] A. YES I DO

[13] Q. HAVE YOU BEEN INVESTIGATING THEM REGARDING

[14] DRUG USE?

[15] A. I HAVE.

[16] Q. IN THE PAST?

[17] A. I HAVE IN THE PAST YES

[18] Q. DO YOU KNOW WHO MIKE PETERSON IS?

[19] A. YES

[20] Q. DO YOU KNOW IF MIKE PETERSON LIVED THERE?

[21] A. I BELIEVE HE WAS STAYING THERE DURING THE

[22] SUMMER.

[23] Q. I'M GOING TO REMOVE AN ITEM FROM THIS BAG

[24] NO 23 AND ASK THE CLERK TO MARK THIS AS AN EXHIBIT

[25] YOU'RE THE EVIDENCE CUSTODIAN?

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[1] A. THAT'S CORRECT

[2] Q. I ASK YOU TO LOOK AT EXHIBIT NO 23 CAN

[3] YOU IDENTIFY WHAT THAT WAS?

[4] A. MAY I LOOK AT THE PACKAGING MATERIAL THAT

[5] YOU REMOVED THIS FROM?

[6] YES I DO RECOGNIZE THIS ITEM

[7] Q. WAS THAT RECOVERED FROM THE RESIDENCE?

[8] A. YES IT WAS

[9] MR. CARTER WE WOULD MOVE ADMISSION OF

[10] DEFENDANT'S EXHIBIT NO 23

[11] MR. COLE. NO OBJECTION

[12] THE COURT 23 WILL BE RECEIVED

[13] MR. CARTER. MAY I PUBLISH IT TO THE JURY?

[14] THE COURT YOU MAY

[15] MR. CARTER I'M RETRIEVING THIS FROM BAG

[16] NO 3 COULD I HAVE THE CLERK MARK THAT?

[17] Q. (BY MR. CARTER) I'M SHOWING YOU WHAT'S

[18] BEEN MARKED AS DEFENDANT'S EXHIBIT 24 DO YOU

[19] RECOGNIZE THAT ITEM?

[20] A. YES I DO

[21] Q. ALL RIGHT AND COULD YOU TELL US IF THAT

[22] ITEM WAS RECOVERED FROM THE RESIDENCE?

[23] A. YES I CAN

[24] Q. AND DO YOU KNOW WHAT LOCATION IT WAS

[25] RECOVERED FROM?

[1] A. YES

[2] Q. WHERE WAS IT?

[3] A. THAT WAS RECOVERED OFF THE PERSON OF THE

[4] DEFENDANT

[5] Q. ALL RIGHT AND DO YOU KNOW WHO RETRIEVED

[6] THAT?

[7] A. YES

[8] Q. WHO WAS IT?

[9] A. THAT WAS OFFICER CALDWELL

[10] Q. HMM

[11] MR. CARTER: I MOVE FOR ADMISSION OF

[12] DEFENDANT'S EXHIBIT NO 24

[13] MR. COLE. NO OBJECTION

[14] THE COURT VERY WELL IT WILL BE RECEIVED

[15] MR. CARTER: MAY I PUBLISH IT TO THE JURY?

[16] THE COURT YOU MAY

[17] Q. (BY MR. CARTER) DID YOU PREPARE A REPORT

[18] IN REFERENCE TO THIS CASE OFFICER FOX?

[19] A. YES I DID

[20] Q. MAY I LOOK AT THAT PLEASE?

[21] A. YES

[22] Q. THAT'S THE EXTENT OF YOUR REPORT?

[23] A. IN THAT REPORT IT REFERS TO THE FIVE PAGE

[24] PROPERTY REPORT FORM.

[25] MR. CARTER: NOTHING FURTHER.

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[1] JUROR PRINCE. CAN I OPEN IT UP?

[2] THE COURT YES YOU CAN OPEN IT UP

[3]

[4] REDIRECT EXAMINATION

[5] BY MR. COLE

[6] Q. THIS IS MARKED AS STATE'S EXHIBIT 25 ARE

[7] THOSE THE OTHER DOCUMENTS FOUND WITH THE PHONE BILL?

[8] A. YES THEY ARE

[9] Q. THEY ARE TWO DISTINCT DOCUMENTS ARE THEY

[10] NOT?

[11] A. THAT'S CORRECT

[12] Q. THE FIRST IS WHAT?

[13] A. SOME KIND OF A RECERTIFICATION FORM BEARING

[14] THE NAME OF CHARIS EASTMOND AND THE ADDRESS OF

[15] SARATOGA RESORT DATED JUNE 28

[16] Q. IS THAT A FOOD STAMP VERIFICATION FORM?

[17] A. YES

[18] Q. I'M SORRY TO MAKE YOU READ IT

[19] A. IT APPEARS TO BE YES

[20] Q. WOULD YOU INDICATE WHAT THIS LETTER IS

[21] ALSO THE SECOND - EXCUSE ME THERE ARE TWO DOCUMENTS

[22] IN HERE TWO ADDITIONAL LETTERS WHAT ADDRESS DO

[23] THOSE BEAR?

[24] A. THIS OTHER DOCUMENT ALSO BEARS CHARIS

[25] EASTMOND DATED JULY 15 1994 WITH THE SAME ADDRESS AT

[1] SARATOGA
 [2] Q. AND THOSE WERE FOUND IN THE HOME?
 [3] A. YES. AND THEY ARE A PAGE OF A SIMILAR
 [4] DOCUMENT JULY 18 94 SAME NAME AND ADDRESS
 [5] MR. COLE. THANK YOU. I MOVE FOR ADMISSION
 [6] OF STATE'S EXHIBIT 25
 [7] MR. CARTER. MAY I SEE THOSE?
 [8] MR. COLE. SURE.
 [9] MR. CARTER. WE WOULD OBJECT TO THE LETTER
 [10] FROM SARATOGA SPRINGS. THE AUTHOR OF THOSE LETTERS
 [11] HAS NOT BEEN CALLED TO TESTIFY. THERE IS - THE
 [12] INFORMATION CONTAINED THEREIN IS NOT RELEVANT TO THIS
 [13] PROCEEDING.
 [14] MR. COLE. THEY'RE BEING OFFERED FOR THE
 [15] FACT THEY WERE FOUND IN THE HOME AND CARRY AN ADDRESS
 [16] WITH CHARIS EASTMOND'S NAME ON IT.
 [17] MR. CARTER. WE'LL STIPULATE TO THAT.
 [18] THE COURT. WITH THAT MEMBERS OF JURY
 [19] THEY'VE STIPULATED. WHICH MEANS THERE WERE DOCUMENTS
 [20] THAT BEAR THE ADDRESS AND NAME OF THE DEFENDANT ON
 [21] THEM.
 [22] MR. COLE. THAT'S ALL I HAVE. YOUR HONOR.
 [23] ""
 [24] ""
 [25] ""

[1] RE-CROSS-EXAMINATION
 [2] BY MR. CARTER:
 [3] Q. OFFICER FOX. DID YOU FIND ANY LETTERS OR
 [4] DOCUMENTS ADDRESSED TO SHANNON EASTMOND IN THE HOME?
 [5] A. I DIDN'T SEARCH THE HOME PER SE. I JUST
 [6] LOGGED IN THE EVIDENCE BROUGHT TO ME BY THE SEARCH
 [7] TEAMS.
 [8] Q. IS THAT POSSIBLE THAT COULD HAVE BEEN
 [9] OVERLOOKED?
 [10] A. I GUESS IT'S POSSIBLE.
 [11] MR. CARTER. THANK YOU. NOTHING FURTHER.
 [12] THE COURT. ANYTHING ELSE?
 [13] MR. COLE. NO.
 [14] THE COURT. YOU MAY STEP DOWN. CALL YOUR
 [15] NEXT WITNESS.
 [16] MR. COLE. WE CALL SAM LIDDIARD TO THE
 [17] STAND.
 [18] THE COURT. COME FORWARD AND RAISE YOUR
 [19] RIGHT HAND. AND THE CLERK WILL ADMINISTER THE OATH TO
 [20] YOU.
 [21]
 [22] SAM LIDDIARD
 [23] CALLED AS A WITNESS HEREIN. HAVING BEEN DULY
 [24] SWORN. WAS EXAMINED AND TESTIFIED AS FOLLOWS
 [25]

[1] THE COURT. BE SEATED IN THE WITNESS CHAIR.
 [2] PLEASE.
 [3]
 [4] DIRECT EXAMINATION
 [5] BY MR. COLE.
 [6] Q. WOULD YOU TELL US YOUR NAME FOR THE RECORD?
 [7] PLEASE?
 [8] A. SAM LIDDIARD.
 [9] Q. WHERE ARE YOU PRESENTLY EMPLOYED?
 [10] A. AMERICAN FORK CITY.
 [11] Q. AND WHAT'S YOUR EXACT OCCUPATION?
 [12] A. I'M A DETECTIVE SERGEANT WITH THE POLICE
 [13] DEPARTMENT.
 [14] Q. DO YOU HAVE ANY NARCOTICS ENFORCEMENT
 [15] RESPONSIBILITIES?
 [16] A. YES, SIR.
 [17] Q. WHAT ARE THOSE?
 [18] A. I BASICALLY HEAD UP THE NARCOTICS
 [19] ENFORCEMENT FOR AMERICAN FORK.
 [20] Q. HOW LONG HAVE YOU BEEN A POLICE OFFICER?
 [21] A. UMM. NINE AND A HALF YEARS.
 [22] Q. AND HOW MUCH OF THAT TIME HAVE YOU WORKED
 [23] WITH DRUG PROBLEMS?
 [24] A. ABOUT SEVEN YEARS OF THAT.
 [25] Q. HAVE YOU HAD SPECIAL TRAINING WITH REGARD

[1] TO CONTROLLED SUBSTANCES?
 [2] A. I HAVE.
 [3] Q. WOULD YOU TELL US BRIEFLY WHAT THAT
 [4] TRAINING CONSISTED OF?
 [5] A. I'VE BEEN TRAINED BY THE STATE OF UTAH AT
 [6] THE POLICE ACADEMY. IN ILLEGAL DRUGS. I'VE ALSO GONE
 [7] TO THE UTAH DRUG ACADEMY. I'VE BEEN TRAINED BY THE
 [8] FEDERAL GOVERNMENT. I HAVE AN EXPERT CERTIFICATION IN
 [9] IDENTIFICATION OF MARIJUANA.
 [10] Q. THAT'S FINE. DO YOU RECALL ASSISTING ON A
 [11] SEARCH WARRANT IN AUGUST 1994?
 [12] A. YES.
 [13] Q. WAS THAT AT THE SARATOGA RESORT?
 [14] A. YES, SIR.
 [15] Q. DO YOU RECALL SPECIFICALLY WHO WAS ASSIGNED
 [16] TO BE IN THE FIRST TEAM TO GO INTO THE MOMENT?
 [17] A. THE AMERICAN FORK SWAT TEAM WAS ASKED TO
 [18] EXECUTE THAT SEARCH WARRANT. AND THEY WERE THE FIRST
 [19] TEAM TO ENTER THE HOUSE.
 [20] Q. WERE YOU IN THAT TEAM?
 [21] A. YES.
 [22] Q. WHO ELSE?
 [23] A. EACH OFFICER?
 [24] Q. JUST AS MANY AS YOU CAN RECALL.
 [25] A. THERE ARE EIGHT MEMBERS OF THAT TEAM.

[1] MYSELF WHICH I COMMAND THAT TEAM. THERE WAS OFFICER
 [2] JASON PETERSON THERE WAS OFFICER - SERGEANT SHON
 [3] NIELSEN RICHARD JENSEN CRAIG CAMPBELL - I REMEMBER
 [4] AS I GO DOWN THE LINE
 [5] Q. WAS GARY CALDWELL PRESENT?
 [6] A. HE WAS BUT HE WAS NOT PART OF THAT INITIAL
 [7] ENTRY TEAM
 [8] Q. SO HE CAME AFTERWARD?
 [9] A. THAT'S RIGHT THE TEAM WAS ASKED TO GO IN
 [10] AND SECURE THE RESIDENCE AND THE OTHER DETECTIVES
 [11] CAME IN AFTERWARDS
 [12] Q. WHEN YOU SECURED THE RESIDENCE WHAT EXACTLY
 [13] OCCURRED DO YOU REMEMBER WHAT HAPPENED?
 [14] A. WHEN THE SWAT TEAM ENTERS THE HOME THEIR
 [15] PURPOSE IS SECURITY TO - SECURE EVERY PERSON IN THAT
 [16] HOME. THAT'S THEIR MAIN OBJECTIVE. THEY'RE NOT TO
 [17] SEARCH OR DO ANYTHING JUST TO SECURE PEOPLE. WHEN
 [18] OUR TEAM INITIALLY WENT IN WE SAW ONE INDIVIDUAL IN
 [19] THE HOME IDENTIFIED AS CHARIS EASTMOND SITTING ON
 [20] THE COUCH TALKING ON THIS PHONE. SHE WAS THE ONLY
 [21] PERSON
 [22] Q. IS SHE HERE TODAY?
 [23] A. YES SIR.
 [24] Q. IS SHE SITTING AT THE DEFENSE TABLE?
 [25] A. YES SHE IS

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[1] Q. WHAT HAPPENED?
 [2] A. WE SAW HER AND TOOK THE PHONE OUT OF HER
 [3] HAND AND IDENTIFIED OURSELVES AS POLICE OFFICERS AND
 [4] SECURED HER ON THE FLOOR. WE LAID HER DOWN ON THE
 [5] FLOOR AND HANDCUFFED HER AND HELD HER UNTIL WE MADE
 [6] SURE NO ONE ELSE WAS IN THE HOME
 [7] Q. WAS SHE SEARCHED?
 [8] A. AFTER THAT POINT SHE WAS SEARCHED
 [9] Q. WHO SEARCHED HER?
 [10] A. OFFICER PETERSON AND MYSELF
 [11] Q. WOULD YOU LOOK AT STATE'S EXHIBIT 4 DO
 [12] YOU KNOW WHAT THAT IS?
 [13] A. THIS IS A BROWN VIAL THAT I BELIEVE WAS
 [14] TAKEN FROM HER PANTS POCKET WHEN SHE WAS SEARCHED AT
 [15] THE TIME THE SWAT TEAM MADE ENTRY INTO THE HOME
 [16] Q. ONCE SHE HAD BEEN SECURED DID YOU SEE A
 [17] PURSE THAT WAS ALSO SEARCHED A LARGE PERHAPS BROWN
 [18] PURSE?
 [19] A. I CAN REMEMBER SEVERAL THINGS THAT WERE
 [20] FOUND IN THE HOME. BUT TO SPECIFICALLY SAY I SAW A
 [21] BROWN PURSE I CAN'T RECALL
 [22] Q. IS THERE ANY DOUBT IN YOUR MIND THAT
 [23] EXHIBIT I JUST SHOWED YOU WAS FOUND ON CHARIS
 [24] EASTMOND?
 [25] A. NO DOUBT AT ALL

[1] Q. YOU PERSONALLY SAW IT?
 [2] A. YES I DID
 [3] MR. COLE. NOTHING FURTHER.
 [4]
 [5] CROSS-EXAMINATION
 [6] BY MR. CARTER:
 [7] Q. DO YOU KNOW WHO RETRIEVED THE 3 X 5 CARD
 [8] FROM MS. EASTMOND?
 [9] A. A 3 X 5 CARD?
 [10] Q. YES THAT MR. MASTERSON IS HOLDING. DO YOU
 [11] SEE THOSE ITEMS?
 [12] A. I DO
 [13] Q. DO YOU KNOW WHO RETRIEVED THOSE FROM
 [14] MS. EASTMOND?
 [15] A. I COULDN'T SAY
 [16] Q. WAS MR. CALDWELL PRESENT WHEN YOU WERE
 [17] SEARCHING MS. EASTMOND?
 [18] A. I BELIEVE HE WAS YES
 [19] MR. CARTER: THANK YOU. NOTHING FURTHER.
 [20] MR. COLE. THAT'S ALL I HAVE, YOUR HONOR.
 [21] THE COURT. MAY THE WITNESS BE EXCUSED?
 [22] MR. COLE. YES
 [23] THE COURT. ANY OBJECTION?
 [24] MR. CARTER: NO
 [25] MR. COLE. I HAVE ONE MORE BRIEF WITNESS.

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[1] YOUR HONOR.
 [2] THE COURT. OKAY
 [3] MR. COLE. MICHAEL DORTCH AND THEN WE'LL
 [4] REST
 [5] THE COURT. IF YOU'LL RAISE YOUR
 [6] RIGHT-HAND THE CLERK WILL ADMINISTER THE OATH TO YOU
 [7]
 [8] MICHAEL DORTCH
 [9] CALLED AS A WITNESS HEREIN HAVING BEEN DULY
 [10] SWORN WAS EXAMINED AND TESTIFIED AS FOLLOWS
 [11]
 [12] THE COURT. BE SEATED HERE IN THE WITNESS
 [13] CHAIR PLEASE.
 [14]
 [15] DIRECT EXAMINATION
 [16] BY MR. COLE
 [17] Q. COULD YOU TELL US YOUR NAME AND SPELL IT
 [18] FOR THE RECORD?
 [19] A. MIKE DORTCH D O-R-T-C-H
 [20] Q. MR. DORTCH WHERE ARE YOU PRESENTLY
 [21] EMPLOYED?
 [22] A. I'M PRESENTLY EMPLOYED WITH THE SARATOGA
 [23] SPRINGS DEVELOPMENT CORP. OUT OF PROVO
 [24] Q. WHAT ARE YOUR RESPONSIBILITIES?
 [25] A. OH I'M MOSTLY RESPONSIBLE FOR THE OFF-SITE

- [1] UTILITIES FOR THE DEVELOPMENT WE'VE GOT PLANNED OUT
 [2] THERE AT SARATOGA.
 [3] Q. HOW LONG HAVE YOU BEEN WORKING IN THAT
 [4] POSITION?
 [5] A. ABOUT FOUR YEARS
 [6] Q. WERE YOU RESPONSIBLE FOR THE MAINTENANCE OF
 [7] SARATOGA RESORT LAST SUMMER?
 [8] A. I WAS
 [9] Q. HOW ABOUT THE FIRST PART OF AUGUST?
 [10] A. I WAS
 [11] Q. WAS THE RESORT OPEN TO THE PUBLIC,
 [12] OFFICIALLY?
 [13] A. NO IT WAS NOT
 [14] Q. DID YOU KEEP INSURANCE ON THE PROPERTY?
 [15] A. WE DID
 [16] Q. AND WHAT KIND OF INSURANCE DID YOU KEEP?
 [17] A. WE KEPT A GENERAL LIABILITY, A BLANKET
 [18] POLICY IN FACT, THERE WAS EVEN A PERIOD OF TIME OUT
 [19] THERE WE HAD THE GATE -- WE ACTUALLY LOCKED THE GATES.
 [20] WE DON'T DO THAT NOW
 [21] Q. CALLING YOUR ATTENTION SPECIFICALLY TO LAST
 [22] SUMMER, LET'S THINK ABOUT JULY AND THE LAST PART OF
 [23] AUGUST '94
 [24] A. OKAY
 [25] Q. AT THAT TIME WAS INSURANCE IN PLACE?

- [1] A. YES IT WAS
 [2] Q. WERE THE GATES LOCKED?
 [3] A. THEY WERE.
 [4] Q. DID YOU ALLOW ANYONE ELSE ONTO THE
 [5] PROPERTY?
 [6] A. WE DID
 [7] Q. WHO DID YOU ALLOW ON TO THE PROPERTY?
 [8] A. THERE WERE A LOT OF PEOPLE WE -- MOST
 [9] ANYBODY WHO CALLED US WITH A GOOD CAUSE WE STAYED
 [10] OUT OF COMMERCIAL ACTIVITIES WE DIDN'T HAVE ANY
 [11] COMPANY PARTIES MAYBE FAMILY REUNIONS, HALF A DOZEN
 [12] SCOUT TROOPS WE HAD A YOUTH CONFERENCE OUT THERE. A
 [13] LOT OF YOUTH ACTIVITIES
 [14] Q. HOW ABOUT CHURCH GROUPS?
 [15] A. YEAH, A LOT OF CHURCH GROUPS IN FACT, WE
 [16] HAD A POLICY IN PLACE BECAUSE -- SEE THE REASON WE
 [17] DIDN'T OPEN THE PARK LAST SUMMER WAS BECAUSE THE
 [18] COUNTY REQUIRED A LOT OF IMPROVEMENTS THERE WASN'T A
 [19] POINT IN PUTTING INTO THE PARK IT WAS A LOT MORE
 [20] MONEY THAN WAS JUSTIFIED SO WE CLOSED IT OFFICIALLY
 [21] TO THE PUBLIC BUT STILL ALLOWED A LOT OF THE LOCAL
 [22] KIDS THEY WOULD SIGN WAIVERS, WHICH I BROUGHT A
 [23] STACK OF, JUST A STATEMENT SAYING THEY KNEW THERE WAS
 [24] NO LIFEGUARDS THERE AND WE KEPT THE POOLS UP AND THE
 [25] GRASS MOWED SO THERE WERE A LOT OF PEOPLE THAT HAD

- [1] STANDING INVITATIONS, ESPECIALLY A LOT OF FAMILIES
 [2] THAT CAME OUT THERE THAT WE ALLOWED FREE RUN.
 [3] Q. DID YOU PUT ANY RESTRICTIONS ON WHEN THEY
 [4] COULD COME?
 [5] A. IF IT WERE BIG GROUPS WE REQUIRED THAT THEY
 [6] NOTIFY US IN OTHER WORDS -- THE ONLY STANDING
 [7] INVITATIONS WE GAVE WERE TO SPECIFIC FAMILIES WE
 [8] MADE THEM SIGN THESE WAIVERS THERE WERE A LOT OF
 [9] JUST LOCAL PEOPLE, YOU KNOW FRIENDS AND FRIENDS OF
 [10] FRIENDS, PEOPLE LIKE THAT
 [11] Q. DID CHILDREN CONGREGATE THERE?
 [12] A. A LOT OF KIDS, A LOT OF YOUTH PARTICULARLY
 [13] NOT A LOT OF LITTLE KIDS, BUT OH 12 TO 18
 [14] Q. WHAT KINDS OF ACTIVITIES DID THEY ENGAGE
 [15] IN?
 [16] A. MOSTLY SWIMMING. WE LIT UP THE WATER SLIDE
 [17] EVEN QUITE A BIT LAST YEAR.
 [18] Q. DO YOU ALSO HAVE POOLS?
 [19] A. YES THERE ARE FOUR SWIMMING POOLS.
 [20] Q. BRIEFLY TELL ME WHAT KIND OF FACILITIES ARE
 [21] AVAILABLE FOR ENTERTAINMENT
 [22] A. VOLLEYBALL, HORSESHOES THERE WERE SOME
 [23] LITTLE KIDDIE RIDES, ABOUT FIVE KIDDIE RIDES. WE DID
 [24] NOT OPEN ANY OF THOSE LAST YEAR. THERE WAS AN OLD
 [25] SNACK BAR WE DID NOT OPERATE AS WELL WE DID KEEP ALL

- [1] FOUR POOLS UP AND GOING LAST YEAR AS WELL AND THE
 [2] WATER SLIDE, WE RAN IT ONCE IN A GOOD WHILE. JUST
 [3] LOOKING AT MY OLD UTILITY BILLS, WE BURNED UP OVER A
 [4] \$1,000 A MONTH LAST YEAR, SO WE WERE OPERATING QUITE A
 [5] BIT OF STUFF BUT WE DIDN'T HAVE IT GOING FULL-TIME
 [6] LIKE WE WOULD IF WE WERE OPEN
 [7] Q. NOW, IF YOU WERE TO ASK TO CHARACTERIZE HOW
 [8] MUCH SARATOGA RESORT WAS USED DURING THE SUMMER ON A
 [9] SCALE OF ONCE A MONTH, TWICE A MONTH, FIVE TIMES A
 [10] MONTH, ONCE A WEEK, COUPLE TIMES A WEEK, DAILY,
 [11] HOURLY, WHAT WOULD YOU SAY?
 [12] A. IT WAS PRETTY MUCH DAILY THERE WAS SOME
 [13] PEOPLE OUT THERE.
 [14] Q. SO IS IT FAIR TO SAY IT WAS OPEN TO THE
 [15] PUBLIC?
 [16] A. WELL, MAYBE LET ME RETRACT THAT DAILY.
 [17] THERE WERE SOME WEEKS WE WOULD HAVE GROUPS OUT THERE
 [18] PRETTY MUCH EVERY NIGHT AND ALMOST -- YEAH, DAILY
 [19] THERE WOULD BE KIDS, YOU KNOW, MY KIDS AND THEIR
 [20] FRIENDS AND THINGS LIKE THAT
 [21] Q. DID YOU EVER TURN ANYONE AWAY THAT ASKED TO
 [22] USE THE RESORT?
 [23] A. YES, WE DID
 [24] Q. LIKE WHAT?
 [25] A. WE HAD SEVERAL REQUESTS FOR COMMERCIAL

[1] ACTIVITIES COMPANY PARTIES AND THINGS AND WE DID
 [2] NOT ALLOW ANY OF THAT USE
 [3] Q YOU'RE FAMILIAR WITH THE DEFENDANT, CHARIS
 [4] EASTMOND?
 [5] A I AM
 [6] Q DID SHE LIVE ON THAT PROPERTY?
 [7] A SHE DID
 [8] Q DO YOU KNOW HOW LONG SHE LIVED ON THAT
 [9] PROPERTY?
 [10] A THREE MONTHS MAYBE
 [11] Q AND THAT WAS DURING THE TIME THAT YOU WERE
 [12] THERE?
 [13] A YES
 [14] MR. COLE I HAVE NOTHING FURTHER
 [15]
 [16] CROSS-EXAMINATION
 [17] BY MR. CARTER:
 [18] Q ARE YOU FAMILIAR WITH ANYBODY ELSE THAT
 [19] LIVED THERE?
 [20] A PARDON?
 [21] Q ARE YOU FAMILIAR WITH ANYBODY ELSE THAT
 [22] LIVED THERE OTHER THAN MS EASTMOND?
 [23] A A MIKE -
 [24] Q ARE YOU IDENTIFYING MIKE PETERSON?
 [25] A YES

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[1] Q ANYBODY ELSE OTHER THAN MIKE PETERSON?
 [2] SHANNON EASTMOND?
 [3] A SHANNON DIDN'T LIVE THERE AT THE SAME TIME
 [4] SHE LIVED THERE EARLIER.
 [5] Q THERE WERE A LOT OF VISITORS TO THAT HOUSE
 [6] AS WELL?
 [7] A A LOT
 [8] Q KAMBI OR BAMBI FOWLER, DO YOU KNOW HER?
 [9] A YES
 [10] Q DID OTHER PEOPLE STAY THERE, LIVE THERE,
 [11] RESIDE THERE ON A NIGHTLY OR EVERY SO OFTEN STAY THERE
 [12] OVERNIGHT?
 [13] A NOT THAT I WAS AWARE OF
 [14] Q AT THIS TIME ON AUGUST 3RD YOU WERE TRYING
 [15] TO GET MS EASTMOND AND HER FAMILY MOVED OUT OF THAT
 [16] HOUSE?
 [17] A WE WERE IN THE PROCESS OF EVICTING THEM
 [18] Q SO I'M ASSUMING THERE MAY HAVE BEEN SOME
 [19] ATTEMPT TO MOVE AT THAT TIME, CORRECT?
 [20] A NOT THAT WE COULD SEE
 [21] Q THE INTERIOR OF THE HOUSE WERE YOU ABLE TO
 [22] OBSERVE THE INTERIOR OF THE HOUSE?
 [23] A ONLY AFTER THE ARREST
 [24] Q AND CAN YOU TELL ME ABOUT ON AUGUST 3RD,
 [25] 1994 WAS THAT - WAS SARATOGA BEING USED BY THE

[1] PUBLIC ON THAT NIGHT - NOT BY THE PUBLIC, BY YOUR
 [2] INVITED GUESTS?
 [3] A ON THE NIGHT OF THE ARREST?
 [4] Q YEAH
 [5] A I DON'T RECALL
 [6] Q IT WAS JUST KIND OF A HIT AND MISS
 [7] SITUATION WHETHER IT HAD BEEN BEING USED OR NOT?
 [8] A YEAH SOME WEEKS WERE WORSE THAN OTHERS
 [9] HOLIDAYS WERE REAL BAD
 [10] Q YOU WOULDN'T CHARACTERIZE IT AS BEING A
 [11] PUBLIC PLACE OR ANYTHING LIKE THAT? IT WAS MORE OF A
 [12] PRIVATE SITUATION BY YOURSELF IT WAS YOUR CHOICE AS
 [13] TO WHO TO LET USE AND NOT LET USE?
 [14] A YES
 [15] Q BUT FROM AN AMUSEMENT PARK THINGS OF THAT
 [16] NATURE, IT'S PRETTY MUCH CLOSED TO THE PUBLIC?
 [17] A PRETTY MUCH THE HARBOR WE WERE A LOT MORE
 [18] LAX WITH A LOT OF PEOPLE USED THE HARBOR.
 [19] Q YOU HAD A BOAT RAMP?
 [20] A THAT'S CORRECT
 [21] Q IS THAT WHAT YOU REFER TO AS THE HARBOR?
 [22] A YES
 [23] Q HOW OFTEN WAS THAT USED?
 [24] A QUITE A BIT
 [25] Q WAS THAT USED FOR RECREATIONAL ACTIVITIES?

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[1] A YES LAUNCHING BOATS AND THEN A LOT OF
 [2] PEOPLE WOULD PARK THEIR BOATS AND COME UP AND USE THE
 [3] RESTROOM THINGS LIKE THAT
 [4] Q WHEN YOU SAY OPEN TO THE PUBLIC, I'M NOT
 [5] ENTIRELY SURE WHAT YOU MEAN WHEN WE ASK YOU SPECIFIC
 [6] QUESTIONS WERE PEOPLE NOT ASSOCIATED WITH SARATOGA
 [7] RESORT USING THE RESORT?
 [8] A THERE WERE OH, I WANT TO GUESS BETWEEN 50
 [9] OR 60 FAMILIES THAT HAD FREE RUN OF THE PARK, THAT
 [10] JUST CAME AND WENT AS THEY PLEASED
 [11] Q SO DO YOU HAVE A ROUGH GUESS AS TO HOW MANY
 [12] PEOPLE THAT INVOLVED?
 [13] A TIMES THAT BY FOUR OR FIVE
 [14] Q SO IS IT FAIR TO SAY 200 PLUS PEOPLE?
 [15] A YES THAT JUST HAD FREE RUN THEN WE
 [16] CATERED - WE HAD A LOT OF CALLS ALL SUMMER FROM
 [17] GROUPS THAT WANTED TO USE THE PARK, FAMILY REUNIONS
 [18] AND THINGS WHICH WE ALLOWED IF WE COULD ACCOMMODATE
 [19] WE WOULD ALLOW IT WE WERE JUST RESTRICTED FROM THE
 [20] COUNTY STANDPOINT ON CHARGING PEOPLE SO EVERYTHING
 [21] WOULD BE FREE
 [22] Q SO YOU DID NOT CHARGE ANYONE FOR THE USE OF
 [23] THE PARK?
 [24] A YES
 [25] Q BUT THEY USED IT?

[1] A. WE DID
 [2] Q. ANY ESTIMATE HOW MANY PEOPLE USED THE PARK
 [3] OTHER THAN THOSE 50 OR 80 FAMILIES, BESIDES THINGS YOU
 [4] INDICATED INCLUDING THINGS YOU INDICATED PREVIOUSLY,
 [5] SCOUT GROUPS YOUTH GROUPS?
 [6] A. I DON'T KNOW THE LAST SUMMER WE OPERATED
 [7] WE HAD ABOUT 75 000 PEOPLE. I WOULD GUESS IF I HAD
 [8] TO GUESS THAT SUMMER I KNOW WE HAD ONE YOUTH GROUP
 [9] OUT THERE A YOUTH CONFERENCE. THERE HAD TO BE CLOSE
 [10] TO A THOUSAND KIDS I WOULD SAY MAYBE 10,000 PEOPLE.
 [11] Q. SO DURING THE SUMMER LAST YEAR YOU HAD
 [12] 10 000 PEOPLE IN SARATOGA RESORT YOU DIDN'T CHARGE
 [13] ANYTHING FOR?
 [14] A. THAT WOULD PROBABLY BE A GOOD GUESS
 [15] MR COLE. THANK YOU
 [16] MR. CARTER: NO QUESTIONS
 [17] THE COURT MAY THE WITNESS BE EXCUSED?
 [18] MR. COLE. YES
 [19] THE COURT ANY OBJECTION?
 [20] MR. CARTER. NO
 [21] THE COURT THANK YOU FOR COMING YOU'RE
 [22] EXCUSED
 [23] MR. COLE. COULD I HAVE JUST A MOMENT?
 [24] THE COURT YOU MAY
 [25] MR COLE. I WOULD MOVE FOR ADMISSION OF

[1] EXHIBIT NO 2 EXHIBIT 17 WHICH IS THE FIRST AID
 [2] KIT - TWO IS THE CRIME LAB REPORT 17 IS THE BROKEN
 [3] GLASS PIPE.
 [4] MR. CARTER. NO OBJECTION TO NO 2
 [5] THE COURT IT WILL BE RECEIVED
 [6] MR. CARTER: NO OBJECTION TO NO 17
 [7] THE COURT NO 17 IS RECEIVED
 [8] MR. COLE. AND NO 18
 [9] MR. CARTER: NO OBJECTION
 [10] THE COURT 18 WILL BE RECEIVED
 [11] MR COLE. THE STATE RESTS, YOUR HONOR.
 [12] MR CARTER I HAVE A MOTION TO MAKE
 [13] THE COURT I'LL ALLOW THAT TO BE MADE AT A
 [14] LATER POINT WITH THE SAME FORCE AND EFFECT AS IF MADE
 [15] AT THIS TIME.
 [16] MR CARTER WE WOULD CALL CHARIS EASTMOND
 [17] TO THE STAND
 [18] THE COURT VERY WELL IF YOU'LL COME
 [19] FORWARD AND RAISE YOUR RIGHT-HAND THE CLERK WILL
 [20] ADMINISTER THE OATH TO YOU
 [21]
 [22] CHARIS EASTMOND
 [23] CALLED AS A WITNESS HEREIN HAVING BEEN DULY
 [24] SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS
 [25]

[1] THE COURT BE SEATED IN THE WITNESS CHAIR,
 [2] PLEASE.
 [3]
 [4] DIRECT EXAMINATION
 [5] BY MR CARTER:
 [6] Q. STATE YOUR NAME.
 [7] A. CHARIS EASTMOND
 [8] Q. HOW OLD ARE YOU CHARIS?
 [9] A. 37
 [10] Q. WHERE DO YOU CURRENTLY RESIDE?
 [11] A. I'M STAYING WITH SOME FRIENDS UP IN SALT
 [12] LAKE.
 [13] Q. WHO IS THIS GOOD-LOOKING YOUNG MAN IN THE
 [14] BACK?
 [15] A. THAT'S MY ONE AND ONLY THAT'S MY SON
 [16] Q. WERE YOU AT THE SARATOGA RESORT ON AUGUST
 [17] 3RD OF 1994?
 [18] A. YES, I WAS
 [19] Q. WERE YOU ANTICIPATING THE ARRIVAL OF THE
 [20] POLICE?
 [21] A. YES I WAS
 [22] Q. IN ANTICIPATION OF THEIR ARRIVAL DID YOU
 [23] HAPPEN TO WRITE DOWN ON A 3 X 5 CARD ANY INSTRUCTIONS?
 [24] A. YES I INSTRUCTED IF I WAS KILLED BY THE
 [25] POLICE, BECAUSE I WOULD NOT ENDANGER MY OWN LIFE, IF I

[1] WAS KILLED, I WANTED IT INVESTIGATED AS A WRONGFUL
 [2] DEATH AND THE MONEY TO BE DIVIDED AMONGST MY CHILD AND
 [3] TWO OTHER PEOPLE.
 [4] Q. I SHOW YOU DEFENDANT'S EXHIBIT 24 IS THAT
 [5] THE 3 X 5 CARDS YOU PREPARED?
 [6] A. YES, IT IS
 [7] Q. WHO LIVED THERE AT THAT RESIDENCE?
 [8] A. MYSELF MY SON MIKE PETERSON AND - WELL,
 [9] THAT'S WHO LIVED THERE.
 [10] Q. ANY OTHER PEOPLE THAT STAYED THERE?
 [11] A. UMM MY SISTER WAS JUST - SHE WOULD
 [12] JUST - WELL, SHE DIDN'T REALLY STAY THERE SHE WOULD
 [13] DROP BY OCCASIONALLY
 [14] Q. DID SHE HAVE ANY OF HER PROPERTY IN THE
 [15] HOUSE?
 [16] A. I THINK EVERYTHING IN THERE BUT THE TRASH
 [17] COMPACTOR, THAT WAS MINE, THE REFRIGERATOR, THAT WAS
 [18] MINE, AND A COUPLE OF LAMPS WERE MINE. THE REST OF
 [19] THE STUFF WAS HER PROPERTY I WAS MOVING HER STUFF
 [20] OUT AND MINE IN AND SOME OF THE CONTENTS WERE UNDER
 [21] THE CARPORT
 [22] Q. AT THE TIME THE POLICE ARRIVED WHAT WERE
 [23] YOU DOING WITH IT INSIDE OF THE HOME?
 [24] A. WHAT WAS I DOING WITH IT?
 [25] Q. WERE YOU ATTEMPTING TO MOVE?

[1] A. I WAS PUTTING HER STUFF OUT AND MOVING MINE
 [2] IN WITH SOME FRIENDS. IT WAS TAKING A LITTLE TIME
 [3] MOVING HER STUFF OUT AND MINE IN.
 [4] Q. ARE YOU FAMILIAR WITH A BAMBI?
 [5] A. BAMBI FOWLER.
 [6] Q. DID THEY VISIT THAT HOME?
 [7] A. YES. THEY WERE THERE TWICE. AND I DON'T
 [8] KNOW QUITE KNOW WHY. BECAUSE I HAVE NO FEELINGS
 [9] TOWARDS THEM. AND THE LAST TIME THEY WERE THERE WAS
 [10] THE DAY I GOT THE SEARCH WARRANT SERVED ON ME.
 [11] Q. I'M GOING TO ASK YOU TO TAKE A LOOK AT
 [12] STATE'S EXHIBIT 4. WOULD YOU PLEASE TELL US IF YOU'VE
 [13] EVER SEEN THAT BEFORE.
 [14] A. UMM. THIS IS ONE WHEN THEY PULLED MY CHANGE
 [15] OUT OF MY POCKET. THIS WAS ALSO -- WELL, I CAN'T SAY
 [16] IT WAS IN MY POCKET BECAUSE IT WASN'T, BUT IT WAS WITH
 [17] MY CHANGE. WHEN THE PERSON OPENED HIS HAND IT WAS IN
 [18] THERE. I DID NOT HAVE IT IN MY POCKET. AND I HAD
 [19] THAT NOTE IN MY OTHER POCKET.
 [20] Q. YOU KNEW THE POLICE WERE COMING?
 [21] A. OH, YEAH. I TOLD THEM WHEN THEY CAME IN I
 [22] HAD BEEN WAITING FOR THEM.
 [23] Q. LET ME GIVE YOU A FEW MORE ITEMS TO LOOK
 [24] AT: STATE'S EXHIBIT 8, WHICH HAS APPARENTLY BEEN
 [25] IDENTIFIED AS A FINGER SCALE. HAVE YOU EVER SEEN

[1] THAT?
 [2] A. I CAN'T SAY I'VE SEEN THAT ONE. I'VE SEEN
 [3] THEM BEFORE, FINGER SCALES.
 [4] Q. IS THIS YOURS?
 [5] A. NO.
 [6] Q. DO YOU KNOW WHOSE IT WOULD BE?
 [7] A. NO. THAT HOUSE WAS OPEN A YEAR. MY SISTER
 [8] LIVED THERE OFF AND ON A YEAR. THEY HAD PEOPLE --
 [9] THEY COULD COME AND GO IF THEY WANTED. THE KITCHEN
 [10] WINDOW WAS BROKE, AND THEY COULD COME STAY IN THERE.
 [11] Q. I SHOW YOU 11, WHICH APPEARS TO BE A
 [12] SYRINGE -- THIS PEN -- I DON'T KNOW, PEN SOMETHING.
 [13] AND THIS ITEM HERE. DO YOU RECOGNIZE ANY OF THOSE?
 [14] A. THE ONLY THING I MIGHT RECOGNIZE IS THAT
 [15] SHOT NEEDLE LOOKING THING. THAT'S WHEN YOU HAVE
 [16] LITTLE TEENY KITTENS, YOU CAN FEED THEM WITH THOSE.
 [17] AND WE DID HAVE KITTENS. WE DIDN'T HAVE TO FEED THEM,
 [18] BUT ...
 [19] Q. I SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT
 [20] NO. 16. HAVE YOU EVER SEEN THOSE? THEIR SUGGESTION
 [21] IS IT'S JOINTS TO MARIJUANA PIPES?
 [22] A. UMM, I'VE SEEN PIPES THAT ARE MADE FROM
 [23] THESE THINGS, BUT I DON'T MAKE PIPES.
 [24] Q. STATE'S EXHIBIT NO. 20, WHICH HAS BEEN
 [25] IDENTIFIED AS A PURSE OF YOURS: IS THAT CORRECT?

[1] A. THAT'S MY WALLET
 [2] Q. DO YOU KNOW ANYTHING ABOUT THE CONTENTS OF
 [3] THAT WALLET?
 [4] A. I KNOW THE PICTURES THEY'RE TALKING ABOUT.
 [5] THE MARIJUANA FRAGMENTS. I KNOW WITH DRUGS PEOPLE ARE
 [6] REALLY CAREFUL WITH THEM AND THEY'RE USUALLY KEPT
 [7] INSIDE THINGS. I DON'T KNOW.
 [8] Q. THE MARIJUANA FRAGMENTS IN THERE, DID YOU
 [9] KNOW THEY WERE IN THERE?
 [10] A. NO.
 [11] Q. HOW COULD IT BE IN YOUR PURSE AND HAVE YOU
 [12] NOT KNOW ABOUT THEM?
 [13] A. BAMBI FOWLER HAD COURT THE NEXT DAY ON THE
 [14] 4TH. AND I WAS WITH BAMBI THAT DAY, AND PURCHASED A
 [15] CAR FROM HER AND HER HUSBAND, KERRY FOWLER. AND BAMBI
 [16] STATED PREVIOUSLY SHE WAS NOT GOING TO GO TO JAIL NO
 [17] MATTER WHAT. IF SHE HAD TO TURN SOMEBODY IN SHE WOULD
 [18] TURN SOMEBODY IN, I THINK, IS HOW SHE MEANT IT. I
 [19] THINK THEY LEFT THE NEXT DAY FOR ALASKA.
 [20] Q. I SHOW YOU STATE'S EXHIBIT NO. 12. IN IT
 [21] IS A PILL BOTTLE APPARENTLY MADE OUT TO A GORDON LOWE
 [22] OF SPRINGVILLE. DO YOU KNOW ANYTHING ABOUT THAT?
 [23] A. I DON'T KNOW A GORDON LOWE.
 [24] Q. HOW ABOUT THIS FILM CONSTER OR CONTAINER?
 [25] A. THE FILM CANNISTER, WHEN I SAW THIS REPORT

[1] OF ALL THE STUFF THEY FOUND, I SHOWED THIS TO AN
 [2] ACQUAINTANCE, AND SHE SAID, "OH, THAT WAS MY FILM
 [3] CANNISTER."
 [4] Q. HOW ABOUT THIS, STATE'S EXHIBIT 15? IT'S
 [5] APPARENTLY A LIGHT BULB THAT'S BEEN BROKEN. DO YOU
 [6] KNOW ANYTHING ABOUT THAT?
 [7] A. NO.
 [8] Q. HOW ABOUT THESE SYRINGES THEY FOUND IN THE
 [9] HOME?
 [10] A. THE ONE SYRINGE IN THE FRIDGE, IT'S A SEVEN
 [11] AND ONE SHOT WITH PARVO. I HAD TWO NEEDLES FOR THAT.
 [12] ONE I WAS GOING TO GIVE MY PUPPY A SHOT. MY SON HAD
 [13] PLAYED WITH THAT NEEDLE AND IT WAS VERY, VERY DULL.
 [14] AND I TRIED TO GIVE MY PUPPY A SHOT AND IT JUMPED OFF
 [15] THE HIP. SO I PURCHASED ANOTHER SHOT TO DO THAT WITH,
 [16] AND I'M NOT SURE IF THAT IS THE ONE THEY FOUND IN THE
 [17] FRIDGE OR NOT.
 [18] Q. HOW ABOUT STATE'S EXHIBIT 10, WHICH APPEARS
 [19] TO BE A SUGAR BOWL AND HAS A GLASS APPARATUS?
 [20] A. I KNOW WHO IT BELONGS TO.
 [21] Q. WHOSE IS IT?
 [22] A. IT'S MY SISTER'S PIPE. BAMBI GAVE IT TO
 [23] HER.
 [24] Q. ANYTHING THE STATE HAS INTRODUCED TODAY
 [25] THAT YOU RECOGNIZE?

- [1] IN A ZIPPERED POCKET IN YOUR PURSE?
- [2] A. I WOULDN'T PUT ANYTHING PAST BAMBI FOWLER.
- [3] Q. YOU DON'T CONTEST MARIJUANA FRAGMENTS IN
- [4] YOUR PURSE?
- [5] A. NO
- [6] Q. IT'S YOUR SOCIAL SECURITY CARD AND
- [7] EVERYTHING ELSE?
- [8] A. YEAH
- [9] Q. IN THE LARGER PURSE THEY FOUND THE FILM
- [10] CANISTER WITH COCAINE RESIDUE. CAN YOU EXPLAIN HOW
- [11] THAT WAS IN YOUR PURSE, TOO?
- [12] A. I DON'T KNOW I WAS TRANSPORTED
- [13] IMMEDIATELY AWAY
- [14] Q. THAT WAS YOUR PURSE, WASN'T IT?
- [15] A. YEAH, I GUESS
- [16] Q. AND THEY WERE YOUR ENVELOPES AND THINGS
- [17] ADDRESSED TO YOU?
- [18] A. YEAH HOW DID YOU SAY THIS, LIKE A GRAB
- [19] BAG TYPE PURSE, A WHOLE BUNCH OF STUFF THAT WAS --
- [20] Q. THAT WAS YOURS?
- [21] A. IT'S KIND OF LIKE THE ONE I HAD PART-TIME
- [22] AS A TRAVELING BAG AND PEOPLE HAVE ACCESS TO THAT
- [23] BAG
- [24] Q. THAT BAG IS YOURS?
- [25] A. YES I OWN IT

- [1] Q. AND THIS ITEM CAME OUT OF IT, DIDN'T IT?
- [2] A. I GUESS SO
- [3] Q. AND IT'S YOUR INDICATION SOMEBODY ELSE, WHO
- [4] IS NOT HERE TODAY, SAYS IT'S HERS?
- [5] A. I JUST KNOW WHAT SHE TOLD ME
- [6] Q. AND THE SYRINGES OUT IN PLAIN VIEW WEREN'T
- [7] YOURS EITHER?
- [8] A. I SAW NO SYRINGES OUT IN PLAIN VIEW SEE
- [9] IF I KNOW THE POLICE ARE COMING IN I DON'T WANT TO
- [10] HAVE THINGS LIKE THIS IN IT
- [11] Q. ALL OF THESE SYRINGES AREN'T YOURS EITHER?
- [12] A. NO, I DON'T USE SYRINGES
- [13] Q. BUT THEY CAME OUT OF YOUR HOUSE?
- [14] A. NOT MY HOUSE. NO LEASE AGREEMENT, NO
- [15] RENTAL AGREEMENT
- [16] Q. BUT YOU WERE LIVING THERE, WEREN'T YOU?
- [17] A. I WAS BETWEEN THERE AND THE LOFT -- WELL, I
- [18] WAS MOVED OUT OF MY OLD HOUSE. I WAS STAYING THERE.
- [19] Q. BUT YOU WERE LIVING THERE, RIGHT?
- [20] A. WELL I SLEPT IN THERE ABOUT TWO WEEKS,
- [21] BASICALLY
- [22] Q. SO YOU WERE LIVING THERE?
- [23] A. BETWEEN THAT AND THE LOFT, YES
- [24] Q. AND YOUR STUFF WAS IN THERE, RIGHT?
- [25] A. PARDON ME?

- [1] Q. AND YOUR THINGS WERE INSIDE THERE, RIGHT?
- [2] A. MY THINGS WERE INSIDE THE HOUSE? A FEW OF
- [3] MY THINGS WERE INSIDE THE HOUSE.
- [4] Q. AND THIS WAS NO 10 WAS THIS IN THE
- [5] KITCHEN?
- [6] A. I SAW THAT I SAW THE SUGAR BOWL THERE
- [7] AND BETWEEN THE KITCHEN AND THE BATHROOM THERE'S SOME
- [8] SHELVES THERE.
- [9] Q. DID YOU SEE THE PIPE STICKING OUT OF IT?
- [10] A. NO, I DIDN'T SEE THE PIPE STICKING OUT OF
- [11] IT
- [12] Q. SO IT WAS THERE IN PLAIN VIEW AND YOU
- [13] DIDN'T SEE THAT?
- [14] A. NO, I DIDN'T SEE THAT
- [15] Q. YOU INDICATED PREVIOUSLY THAT YOU'VE SEEN
- [16] PIPES. ARE YOU FAMILIAR WITH THE DRUG CULTURE?
- [17] A. NO. I HAD A STORE THAT SOLD -- A STORE
- [18] THAT HAD DIFFERENT ITEMS IN IT, LIKE A SWAP MEET, BACK
- [19] WHEN THEY SOLD IT. AND YES, I'M FAMILIAR WITH THE
- [20] DRUG CULTURE.
- [21] Q. SO YOUR ANSWER IS YES, YOU'RE FAMILIAR WITH
- [22] THE DRUG CULTURE?
- [23] A. YES
- [24] Q. SO YOU'RE FAMILIAR WITH PEOPLE WHO USE
- [25] DRUGS?

- [1] A. YEAH, I HAVE KNOWN A FEW
- [2] Q. ARE YOU FAMILIAR WITH THE PARAPHERNALIA
- [3] ASSOCIATED WITH DRUGS?
- [4] A. SOME OF IT
- [5] Q. SO IS THIS PARAPHERNALIA?
- [6] A. I GUESS YOU COULD -- YEAH, I'VE SEEN THAT
- [7] TYPE OF THING USED
- [8] Q. AND THIS WAS IN THE BEDROOM, WASN'T IT?
- [9] A. THAT WASN'T MY BEDROOM SINCE THE BED WASN'T
- [10] MINE. THE ONLY THING REALLY IN THERE THAT WAS MINE
- [11] WAS A LAMP
- [12] Q. WERE YOU SLEEPING IN THE GARAGE?
- [13] A. NO, IN THE LIVING ROOM THE BEDROOM WAS A
- [14] MESS
- [15] Q. DO YOU KNOW WHAT THESE ARE, STATE'S EXHIBIT
- [16] 13, THE METAL THING?
- [17] A. YOU SHOWED ME ONE OF THOSE EARLIER.
- [18] Q. ARE THEY FINGER SCALES?
- [19] A. YEAH
- [20] Q. DO YOU KNOW WHAT THEY'RE USED FOR?
- [21] A. YEAH YOU SAID EARLIER -- ONE OF THEM DID
- [22] LIDDARD SAID THEY USED THEM FOR WEIGHING MARIJUANA OR
- [23] SOMETHING.
- [24] Q. IN YOUR BEDROOM UNDER YOUR MATTRESS THEY
- [25] FOUND THESE?

- [1] A MY WALLET
- [2] Q DO YOU KNOW WHO WOULD HAVE OWNED OR
- [3] POSSESSED THESE ITEMS?
- [4] A VARIOUS PEOPLE AFTER THEY HAD SECURED
- [5] AFTER I WAS HANDCUFFED AND SITTING IN THE CHAIR, I
- [6] SAID "ANYTHING YOU FIND IN THIS HOUSE I'M GOING TO BE
- [7] ARRESTED NO?" AND THEY SAID "YEAH, ANYTHING IN THIS
- [8] HOUSE IS YOURS " AND THAT'S NOT THE CASE.
- [9] Q LET ME ASK YOU YOU KNEW THE POLICE WERE
- [10] COMING, CORRECT?
- [11] A CORRECT
- [12] Q HOW MUCH WARNING DID YOU HAVE THEY WERE
- [13] COMING?
- [14] A I HAD 12 HOURS PRIOR NOTICE.
- [15] Q THE HOUSE, WHEN WE LOOK AT THE VIDEOTAPE
- [16] THE HOUSE SEEMS TO BE IN SOMEWHAT DISARRAY?
- [17] A I HAD BEEN MOVING MY SISTER'S STUFF OUT AND
- [18] CLEANING THIS PLACE BECAUSE IT HAD BEEN VACANT -- NOT
- [19] VACANT, BUT NOBODY HAD STAYED THERE. MY SON CAN TELL
- [20] YOU THIS I CLEANED FOR WEEKS AND WEEKS AND WEEKS.
- [21] THERE WERE MICE AND SEVEN LAYERS OF CLOTHES AND ALWAYS
- [22] A MESS AND I'M GETTING THE PLACE IN A HALFWAY DECENT
- [23] ORDER. AND MIKE PETERSON AND I HAVE A FIGHT, AND HIM
- [24] TRYING TO GET HIS STUFF OUT, AND MIKE DORTCH GIVING ME
- [25] TIME TO GET OFF THE PROPERTY AND THE DEAL WAS I WAS

- [1] SUPPOSED TO STAY THERE. ANYWAY, I WAS SUPPOSED TO BE
- [2] MOVING BACK OUT SO THE HOUSE WAS -- I MEAN MY
- [3] SISTER'S STUFF IS STILL A CLUTTERED MESS, AND MY STUFF
- [4] TRYING TO GET PACKED BACK UP
- [5] Q TELL ME WHAT WAS GOING ON WITH SARATOGA.
- [6] YOUR FATHER HAD OWNED IT, IS THAT CORRECT?
- [7] A YEAH AND HE HAD LEASED THE PROPERTY THE
- [8] SUMMER BEFORE, AND THEN WITH AN OPTION AND THEY
- [9] NEVER DID EXERCISE THEIR OPTION I DON'T KNOW WHY
- [10] BUT ANYWAY THIS SUMMER THEY ALSO LEASED IT WITH AN
- [11] OPTION AND IT WAS SOLD AT LEAST WITH AN OPTION BUT
- [12] HE WAS STILL THE OWNER OF IT IT WAS SUPPOSED TO
- [13] CLOSE ON NOVEMBER 30 AND I WAS TOLD I COULD MOVE
- [14] INTO THE HOUSE AND STAY UNTIL NOVEMBER 30TH MIKE
- [15] DORTCH HAD OTHER PLANS HE WANTED HIS MOTHER TO MOVE
- [16] IN, BUT HE DIDN'T TELL MY FATHER THIS HE KEPT GIVING
- [17] ME I BROKE SOME CERTAIN RULE, AND NOW I HAD NO GATE
- [18] PRIVILEGES I COULDN'T HAVE FRIENDS OUT --
- [19] Q THAT'S KIND OF A SIDE ISSUE.
- [20] TELL US HOW ACCESSIBLE THE SARATOGA AREA
- [21] WAS TO THE PUBLIC
- [22] A NOT AT ALL ACCESSIBLE THE GATES WERE
- [23] LOCKED, GATES WERE BOTH PADLOCKED, AND YOU HAD TO HAVE
- [24] A KEY TO GET IN MY FAMILY HAD A KEY LET'S SEE
- [25] THERE'S NO TRESPASSING SIGNS ALL OVER, "CLOSED FOR THE

- [1] SEASON." BIG SIGN THAT SAYS "SARATOGA CLOSED FOR THE
- [2] SUMMER DUE TO MAJOR RENOVATIONS CALL US --"
- [3] Q WHEN PEOPLE WOULD CALL ON THE PHONE TO THE
- [4] SARATOGA NUMBER, WHAT KIND OF MESSAGE WOULD THEY
- [5] RECEIVE?
- [6] A SARATOGA IS CLOSED FOR MAJOR RENOVATIONS,
- [7] AND MAYBE ANOTHER NUMBER TO CALL
- [8] Q WHAT KIND OF HARBOR WAS THERE?
- [9] A BARELY A HARBOR NOT BOAT LAUNCHING
- [10] MATERIAL I DON'T THINK I SAW ANYBODY LAUNCH A BOAT
- [11] I WOULD SEE PEOPLE GO DOWN AND FISH, SNEAK IN UNDER
- [12] THE GATES, AND GO DOWN AND FISH AND GET KICKED OUT
- [13] Q MR. DORTCH HAS BEEN VERY RESTRICTIVE ON WHO
- [14] HE LET IN?
- [15] A YES, VERY RESTRICTIVE
- [16] MR. CARTER: THANK YOU
- [17]
- [18] CROSS-EXAMINATION
- [19] BY MR. COLE:
- [20] Q DID YOU LIVE IN THIS HOME?
- [21] A NOT REALLY I WAS MOVING MY STUFF IN, AND
- [22] THEN I WAS MOVING MY STUFF OUT
- [23] Q WERE YOU MOVING IT IN OR MOVING OUT WHEN
- [24] THE POLICE CAME?
- [25] A I WAS IN THE PROCESS OF MOVING IT OUT

- [1] Q SO IT WAS YOUR STUFF IN THE HOME?
- [2] A IT WAS MY STUFF BARELY IN THE HOME. IT WAS
- [3] STILL MY SISTER'S STUFF IN THE HOME, ALL HER
- [4] FURNITURE.
- [5] Q ALL OF THE ITEMS IN PLAIN VIEW ON THE VIDEO
- [6] WERE NOT YOURS?
- [7] A NO, I CAN'T CLAIM ANY OF THEM. MY PURSE
- [8] Q IN YOUR PURSE WERE THOSE MARIJUANA
- [9] FRAGMENTS WERE THOSE YOURS?
- [10] A PARDON ME?
- [11] Q WERE THE MARIJUANA FRAGMENTS IN THE PURSE
- [12] YOURS?
- [13] A I WOULDN'T SAY THEY WOULD BE MINE. I CAN
- [14] GIVE YOU A NUMBER OF REASONS WHY THEY WOULD BE THERE.
- [15] Q TELL US
- [16] A I WAS WITH BAMBI FOWLER AND SHE HAS A REAL
- [17] VENDETTA AGAINST ME, AS WELL AS MR. CALDWELL
- [18] Q SO YOU RAN AROUND WITH HER?
- [19] A NO, I BOUGHT A CAR FROM HER, AND SHE TOWED
- [20] IT BACK DURING THE NIGHT
- [21] Q SO YOU BOUGHT A CAR FROM SOMEBODY WHO HAS A
- [22] VENDETTA AGAINST YOU?
- [23] A I GUESS YOU COULD SAY THAT, BECAUSE THE CAR
- [24] WAS 70 BUCKS
- [25] Q AND THIS PERSON PUT THE MARIJUANA FRAGMENTS

[1] A. IN MY SISTER'S BEDROOM UNDER HER MATTRESS
 [2] Q. AND THEY HAVE COCAINE?
 [3] A. UNDER HER MATTRESS
 [4] Q. NOBODY HAS TESTIFIED YOUR SISTER IS LIVING
 [5] THERE?
 [6] A. THAT'S RIGHT
 [7] Q. JUST THAT QUESTION: NO ONE ELSE HAS SAID
 [8] YOUR SISTER WAS LIVING THERE?
 [9] A. NO
 [10] Q. MR. DORTCH SAID ABOUT 10,000 PEOPLE HAD
 [11] BEEN TO SARATOGA DURING THE SUMMER. DO YOU HAVE AN
 [12] ESTIMATE?
 [13] A. I WOULD SAY ON THE 4TH OF JULY 300, 400
 [14] PEOPLE WERE THERE. IT WAS A FAMILY GATHERING OF THE
 [15] DORTCHES
 [16] Q. AND THERE WERE ALL KINDS OF OTHER GROUPS
 [17] OUT THERE?
 [18] A. NO THERE WEREN'T
 [19] Q. HIS ESTIMATE OF 10,000 PEOPLE IS DOLLARS?
 [20] A. \$10,000?
 [21] Q. PEOPLE ARE LYING?
 [22] A. THERE WERE DEFINITELY NOT 10,000 PEOPLE
 [23] THAT CAME OUT DURING THE TIME I WAS THERE. I WAS OUT
 [24] THERE MAYBE A MONTH, MONTH AND A HALF, AND I SAW THE
 [25] PEOPLE OUT ON THE 4TH OF JULY FOUR TO 500 MAXIMUM.

[1] AND IT WAS ALL HIS FAMILY
 [2] Q. SO THE BOTTOM LINE IS THAT THE OFFICERS
 [3] PLANTED SOMETHING ON YOU WHEN THEY SEARCHED YOU,
 [4] RIGHT?
 [5] A. UMM --
 [6] Q. THEN SOMEONE PLANTED SOMETHING IN YOUR
 [7] PURSE RIGHT THEN THEY PLANTED THINGS THROUGHOUT YOUR
 [8] HOUSE?
 [9] A. WELL, IF YOU KNOW --
 [10] Q. THAT'S A YES OR NO
 [11] A. YES
 [12] Q. THAT'S YOUR TESTIMONY?
 [13] A. YES
 [14] MR. COLE. NOTHING FURTHER.
 [15] MR. CARTER. NOTHING FURTHER.
 [16] THE COURT. YOU MAY STEP DOWN
 [17] MR. CARTER. WE HAVE NO FURTHER WITNESSES,
 [18] YOUR HONOR
 [19] THE COURT. ANY REBUTTAL?
 [20] ALL RIGHT. WE'RE GOING TO RECESS NOW. AND
 [21] HOPEFULLY WE CAN GET THE INSTRUCTIONS READY FOR YOU SO
 [22] THAT WE CAN PROCEED THIS AFTERNOON, AND WE'LL SEE HOW
 [23] WE'RE COMING ON PREPARATION. SO IN THE MEANTIME IF
 [24] YOU'LL GO TO THE JURY ROOM AND WE'LL START GETTING
 [25] REALLY BUSY ON THE INSTRUCTIONS AND SEE IF WE CAN GET

[1] THOSE DONE PROMPTLY
 [2] AND IN THE MEANTIME I WOULD AGAIN ADMONISH
 [3] YOU NOT TO DISCUSS THE CASE AMONGST YOURSELVES NOR
 [4] PERMIT ANYONE ELSE TO DISCUSS THE CASE WITH YOU, AND
 [5] HAVE NO CONVERSATION ON ANY TOPIC WITH THE ATTORNEYS
 [6] PARTIES OR WITNESSES. AND WE'LL BE IN RECESS. AND
 [7] MR. CARTER. YOU CAN GO AHEAD AND TAKE CARE OF THAT
 [8] OTHER MATTER.
 [9] (RECESS HELD)
 [10] THE COURT. THE RECORD MAY SHOW THE JURY IS
 [11] ALL PRESENT. COUNSEL FOR THE STATE AND COUNSEL FOR THE
 [12] DEFENDANT AND THE DEFENDANT ARE PRESENT.
 [13] I MUST APOLOGIZE. MY CLERK BAILIFF TOLD ME
 [14] SHE WAS GOING ON AN INTERVIEW FOR A GUARDIAN AD LITEM
 [15] POSITION. BUT FOR SOME REASON IN MY MIND IT WAS
 [16] TOMORROW SHE WAS GOING. AND I THOUGHT, WELL, THAT'S
 [17] FINE, BUT IT WAS TODAY. AND AS A CONSEQUENCE I DON'T
 [18] HAVE THE JURY INSTRUCTIONS READY AT THIS TIME. AND WE
 [19] HADN'T ANTICIPATED THIS TRIAL -- WE HAD ANTICIPATED
 [20] THIS TRIAL WOULD GO TWO DAYS. AND I THINK SHE THOUGHT
 [21] THAT WAS ALSO THE CASE. BUT THE BOTTOM LINE IS WE'LL
 [22] HAVE TO HAVE YOU COME BACK IN THE MORNING SO WE CAN
 [23] CONCLUDE. YOU'VE HEARD ALL THE EVIDENCE YOU'RE GOING
 [24] TO HEAR.
 [25] WHAT TIME CAN WE START? I DO APOLOGIZE. I

[1] USUALLY HAVE EVERYTHING READY. AND THERE IS NO DELAY
 [2] FOR INSTRUCTIONS. BUT NOT TODAY.
 [3] COUNSEL, IS YOUR TIME SUCH THAT YOU COULD
 [4] BE HERE AT 9:00?
 [5] MR. COLE. SURE.
 [6] MR. CARTER. I DON'T KNOW, BUT I'LL MAKE IT
 [7] REGARDLESS.
 [8] THE COURT. ALL RIGHT. LET'S START AT
 [9] 9 O'CLOCK TOMORROW. AND ASSEMBLE AT THE SAME PLACE YOU
 [10] ASSEMBLED AFTER LUNCH TODAY.
 [11] AND DURING THIS RECESS NOW, AS YOU GO HOME
 [12] YOUR FAMILY IS GOING TO WANT TO KNOW -- AND FRIENDS --
 [13] ABOUT WHAT YOU'VE BEEN DOING AND WHAT THIS CASE IS
 [14] ABOUT. AND I HAVE TO INSTRUCT YOU NOT TO DISCUSS THE
 [15] CASE WITH THEM, BECAUSE IF YOU DO THEN THAT INTERJECTS
 [16] THOUGHTS AND CONSIDERATIONS BY OTHERS WHO HAVE NOT
 [17] HEARD THE EVIDENCE. IT ALSO TENDS TO SOLIDIFY YOUR
 [18] OWN THINKING. AND YOU SHOULD RESERVE THAT FOR THE
 [19] TIME WHEN YOU CAN ALL COLLECTIVELY CONSIDER THE
 [20] EVIDENCE. SO DURING THE RECESS, AT THIS TIME IN
 [21] PARTICULAR, DO NOT DISCUSS THE CASE WITH ANYONE ELSE,
 [22] NOR PERMIT THEM TO DISCUSS IT WITH YOU. AND AGAIN,
 [23] HAVE NO CONVERSATION ON ANY TOPIC WITH THE ATTORNEYS,
 [24] PARTIES OR WITNESSES. AND WE'LL START TOMORROW
 [25] MORNING AT 9 O'CLOCK. AND YOU'LL BE EXCUSED AT THIS

[1] TIME

[2] AND COUNSEL WE'LL HEAR YOUR OTHER MATTERS

[3] HERE. SEE YOU IN THE MORNING 9 O'CLOCK.

[4] (JURY RECESSED FOR THE EVENING)

[5] THE COURT OKAY MR. CARTER, YOU HAD A

[6] MOTION FIRST OF ALL.

[7] MR. CARTER WE INTENDED TO MAKE IT AT THE

[8] END OF THE STATE'S CASE AND YOU ADVISED US WE COULD

[9] MAKE IT NOW FIRST WE WOULD LIKE TO MAKE A MOTION TO

[10] DISMISS IN THAT THIS IS NOT A DRUG-FREE ZONE IT

[11] DOESN'T FALL WITHIN THE DEFINITION THAT'S SET OUT BY

[12] STATUTE WE THINK THAT'S FAIRLY CLEAR.

[13] AND THE SECOND MOTION WOULD BE THIS IS

[14] SIMPLY A PARAPHERNALIA CASE PARAPHERNALIA ASSOCIATED

[15] WITH SOME RESIDUE BY THE PARAPHERNALIA STATUTE ALONE

[16] IT CONTEMPLATES RESIDUE WILL BE PLACED OR FOUND UPON

[17] THE SUBJECT MATTER. I THINK THAT IS WHAT IS

[18] CONTEMPLATED BY THE LEGISLATURE, AND OUGHT TO BE

[19] PROSECUTED AS SUCH I HAVE FORWARDED TO OR GIVEN TO

[20] THE COURT A MOTION TO DISMISS IN WRITING SETTING

[21] FORTH -- THERE IS A DOUBLE JEOPARDY CLAIM ATTACHED

[22] THAT SAYS THE STATE OUGHT NOT TO BE PROSECUTING THE

[23] DEFENDANT TWICE FOR THE SAME ACT OR OFFENSE. I'VE

[24] GIVEN YOU SOME SUPPORTING LAW ON THAT MATTER, AND WE

[25] THINK THAT IS WELL PLACED IN ADDITION THE SINGLE

[1] CRIMINAL EPISODE STATUTE WOULD APPLY AND PROHIBIT SUCH

[2] CONDUCT

[3] WE ALSO HAVE A SITUATION WHERE UNDER STATE

[4] VERSUS HILL A 1984 UTAH CASE IT PROVIDES THAT THE

[5] MORE PARTICULAR STATUTE SHALL APPLY I'VE CITED THAT

[6] IN MY BRIEF AS WELL.

[7] JUST BRIEFLY ON THE ISSUE OF SINGLE

[8] CRIMINAL EPISODE AND DOUBLE JEOPARDY WE'VE HAD A

[9] NUMBER OF CASES DECIDED BY OUR UTAH COURTS THAT SAYS

[10] YOU CAN'T CONVICT THEM TWICE FOR THE SAME CONDUCT,

[11] AG-ASSAULT MAY BE A SECONDARY TO MURDER AG-ROBBERY

[12] MAY BE A LESSER INCLUDED TO FIRST DEGREE MURDER YOU

[13] CAN'T DO IT TWICE POSSESSION OF A STOLEN VEHICLE MAY

[14] BE A LESSER INCLUDED OFFENSE OF VEHICLE THEFT

[15] AGGRAVATED ROBBERY ETC THEY GET ONE SHOT AT THE

[16] APPLE THAT'S ALL IN THIS CASE THEY HAVE A RESIDUE

[17] CASE ON PARAPHERNALIA AND WE DON'T THINK THEY CAN

[18] PROSECUTE ON BOTH THE RESIDUE AND THE PARAPHERNALIA AS

[19] WELL BOTH

[20] THE COURT MR. COLE?

[21] MR. COLE FIRST OF ALL THE PARAPHERNALIA

[22] STATUTE CONTEMPLATES RESIDUE AS AN ADDITIONAL FACTOR

[23] IN DETERMINING WHETHER PROPERTY IS PARAPHERNALIA AND

[24] BEING USED IN THAT MANNER IT DOES NOT INDICATE AS AN

[25] ELEMENT OF THE CRIME THAT PARAPHERNALIA ACTUALLY BE

[1] FOUND ON THE ITEMS IT'S FROM THOUSANDS AND THOUSANDS

[2] OF CASES IN UTAH DOESN'T HAVE TO HAVE PARAPHERNALIA

[3] ON IT TO BE PARAPHERNALIA --

[4] THE COURT YOU MEAN RESIDUE

[5] MR. COLE RESIDUE I'M SORRY

[6] WITH RESPECT TO THE DOUBLE JEOPARDY CLAUSE,

[7] THE CRIMES ARE DISTINCT AND DIFFERENT POSSESSION OF

[8] COCAINE IS A DIFFERENT CHARGE THAN A POSSESSION OF

[9] PARAPHERNALIA COCAINE CONTEMPLATES THE SUBSTANCE

[10] PARAPHERNALIA CONTEMPLATES THE ITEMS USED TO INGEST

[11] THE SUBSTANCE AS I INDICATED BEFORE, RESIDUE IS

[12] SIMPLY AN INDICATION THAT PARAPHERNALIA IS IN FACT

[13] PARAPHERNALIA. I THINK IN CLOSE EXAMINATION OF THE

[14] STATUTE IT SAYS THAT'S VERY CLEAR. I THINK COUNSEL IS

[15] ALSO ARGUING INDIRECTLY RESIDUE IS INSUFFICIENT FOR A

[16] CONVICTION CASE LAW FROM THE COURT OF APPEALS

[17] CLEARLY INDICATES IF IT IS OF SUFFICIENT QUANTITY THAT

[18] THE PERSON KNOWS WHAT IT IS AND HAS IT, THEY DON'T

[19] HAVE TO HAVE AN AMOUNT WHICH WOULD PROVIDE IN FACT A

[20] PHYSICAL EFFECT AND RESIDUE SUFFICIENT TO BE TESTED

[21] IS SUFFICIENT, IN STATE VERSUS FARLEY

[22] I THINK THERE'S CLEAR EVIDENCE ON EACH OF

[23] THE COUNTS THAT SHE WAS IN POSSESSION OF COCAINE,

[24] METHAMPHETAMINE, MARIJUANA AND ITEMS WHICH COULD BE

[25] CONSIDERED PARAPHERNALIA.

[1] ON THE ISSUE OF DRUG-FREE ZONE, IT'S TRUE

[2] IT WAS NOT OPEN TO THE PUBLIC BUT THE TESTIMONY HERE

[3] TODAY IS IN EXCESS OF 10,000 PEOPLE USED THAT

[4] PARTICULAR RESORT OVER THE COURSE OF THE SUMMER. AT

[5] THE MOST THEY HAD TO ASK TO USE IT THEY HAD ONE

[6] GROUP THAT HAD OVER A THOUSAND PEOPLE THAT USED IT

[7] MS. EASTMOND TESTIFIED THERE WERE 400 THERE ON THE 4TH

[8] OF JULY MR. DORTCH TESTIFIED THAT THERE WERE 50 TO

[9] 60 FAMILIES WHO HAD FREE RUN OF THE SARATOGA RESORT

[10] I WOULD INDICATE THAT'S A QUESTION FOR THE JURY TO

[11] MAKE A DETERMINATION IT'S CERTAINLY NOT A REASON TO

[12] DISMISS THE ENTIRE CHARGE BECAUSE THE STATUTE WHICH

[13] TALKS ABOUT DRUG-FREE ZONES CONTEMPLATES AN

[14] ENHANCEMENT OF ANOTHER CHARGE, WHICH IS SIMPLE

[15] POSSESSION WE SUBMITTED JURY INSTRUCTIONS ON THAT

[16] LESSER INCLUDED OFFENSE, AND I THINK THAT'S MORE THAN

[17] APPROPRIATE IF THE DECISION THIS IS OR IS NOT A

[18] DRUG-FREE ZONE DOES NOT RELIEVE THE DEFENDANT OF THE

[19] QUESTION OF LIABILITY WITH REGARD TO POSSESSION OF

[20] COCAINE, WHETHER IT BE HERE OR SOMEWHERE ELSE IN THE

[21] COUNTY SO WE WOULD OPPOSE ALL OF THE MOTIONS

[22] THE COURT WHY DON'T YOU TALK ABOUT YOUR

[23] LESSER INCLUDED FOR A MINUTE AND THEN HAVE MR. CARTER

[24] RESPOND TO THAT

[25] MR. COLE AS I INDICATED THERE ARE TWO

[1] DISTINCT IDEAS OCCURRING HERE. THERE IS THE
 [2] UNDERLYING QUESTION OF WHETHER OR NOT THE DEFENDANT
 [3] WAS IN POSSESSION OF THESE SUBSTANCES AND
 [4] PARAPHERNALIA. THEN THERE IS AN ADDITIONAL QUESTION
 [5] AS CONTEMPLATED BY THE STATUTE WHICH INDICATES IT'S
 [6] ENHANCED BY ONE DEGREE IF THAT CONDUCT OCCURRED WITHIN
 [7] A DRUG-FREE ZONE. AND SO THE UNDERLYING OFFENSE IS
 [8] CLEARLY AN OFFENSE WHICH CAN BE PROSECUTED. OUR
 [9] DECISION TO TRY AND ENHANCE BY A DRUG-FREE ZONE DOES
 [10] NOT CHANGE THE NATURE OF THE UNDERLYING OFFENSE, WHICH
 [11] IS CRIMINAL CONDUCT. POSSESSION. THE ONLY DIFFERENCE
 [12] IS WHERE IT'S LOCATED. DRUG-FREE ZONE ENHANCES IT
 [13] SO THEREFORE IF THE DRUG-FREE ZONE IS NOT SHOWN, THERE
 [14] IS STILL CRIMINAL CONDUCT UNDER THE STATUTE, WITH
 [15] POSSESSION OF THOSE ITEMS. AND I THINK IT'S VERY
 [16] CLEAR THE STATE IS ENTITLED TO THAT LESSER INCLUDED
 [17] OFFENSE, GIVEN THE FACT THERE IS CONTRADICTORY
 [18] TESTIMONY WHETHER OR NOT THIS QUALIFIES UNDER THE
 [19] STATUTE AS A RECREATIONAL PLACE OPEN TO THE PUBLIC. I
 [20] THINK THEY ARE CERTAINLY ENTITLED TO MAKE A
 [21] DETERMINATION ABOUT THE UNDERLYING POSSESSION
 [22] OFFENSES, INDEPENDENT OF WHETHER THEY ARE GOING TO
 [23] ALLOW ENHANCEMENT BY DETERMINING THERE IS A DRUG-FREE
 [24] ZONE.
 [25] MR. CARTER: WE OBJECT TO THE INCLUSION OF

[1] A LESSER INCLUDED OFFENSE. WE THINK THAT'S OUR
 [2] DECISION. THE STATE MADE A CHOICE TO CHARGE THIS AS A
 [3] SECOND DEGREE. WE THINK THEY'RE STUCK WITH THE
 [4] CHOICE.
 [5] THE COURT: I'LL TAKE BOTH MATTERS UNDER
 [6] ADVISEMENT, COUNSEL. I'LL CERTAINLY MAKE A DECISION
 [7] RELATIVE TO THE LESSER INCLUDED BEFORE THE JURY IS
 [8] ALLOWED TO DELIBERATE. BUT AS TO YOUR MOTION TO
 [9] DISMISS, I WILL ALLOW THE ISSUE TO GO TO THE JURY. I
 [10] THINK THAT IT IS A FACT SENSITIVE ISSUE FOR THE JURY
 [11] TO MAKE THOSE DETERMINATIONS, IN PARTICULAR WHETHER
 [12] IT'S A DRUG-FREE ZONE OR NOT. AS THE FACTS ARE NOW
 [13] BEFORE THE COURT, IT BECOMES FACT SENSITIVE.
 [14] AND COUNSEL, WE BEST HAVE YOU HERE ABOUT A
 [15] QUARTER TO 9:00. AND I THINK WE'LL HAVE THE
 [16] INSTRUCTIONS DONE FOR YOU TO THE POINT THAT ALL WE'LL
 [17] HAVE TO DO IS REVIEW THEM AND TAKE ANY EXCEPTIONS AND
 [18] OBJECTIONS.
 [19] MR. CARTER:
 [20] MR. CARTER: I HAVE SUBMITTED SOME, JUDGE,
 [21] AND ADAPTED THEM A LITTLE IN HANDWRITING. I'LL GET
 [22] YOU A COPY TOMORROW. I ALSO HAD A CHANCE TO TALK TO
 [23] SHERRY RAGAN ABOUT THE TRIAL ON THE 8TH AND 9TH. WE
 [24] HAVE A SUPPRESSION SET FOR WEDNESDAY. SHE HAS NO
 [25] OBJECTION TO THAT BEING CONTINUED UNTIL THAT IS

[1] RESOLVED AND ALSO A MATTER WITH JUDGE PARK. IT WAS MY
 [2] UNDERSTANDING FROM SOME COMMENTS THERE MAY BE SOME
 [3] RESOLUTION OF THAT MATTER.
 [4] MR. COLE: WE ANTICIPATE IN TALKING WITH
 [5] MS. RAGAN, IF WE RECEIVE A CONVICTION OR PARTIAL
 [6] CONVICTION IN THIS MATTER AND SOME KIND OF CULPABILITY
 [7] IN JUDGE PARK'S, RESOLVE THINGS.
 [8] THE COURT: THAT WILL PROBABLY END ALL
 [9] PROSECUTIONS?
 [10] MR. COLE: IT WOULD KIND OF BE OVERKILL,
 [11] DEPENDING UPON WHAT HAPPENS IN THIS MATTER. SO I
 [12] DON'T THINK WE HAVE ANY PROBLEM MOVING IT PAST JUDGE
 [13] PARK'S.
 [14] MR. CARTER: SO COULD THOSE MATTERS BE
 [15] CONSIDERED STRICKEN?
 [16] THE COURT: WE'LL GO AHEAD AND STRIKE THE
 [17] SUPPRESSION HEARING AS WELL AS THE TRIAL DATE. IT'S
 [18] ON DEFENDANT'S MOTION. AND WE CAN RESET THOSE
 [19] TOMORROW AT THE CONCLUSION OF THIS TRIAL.
 [20] MR. CARTER: THANK YOU.
 [21] THE COURT: OKAY. BRING YOUR CALENDAR SO
 [22] YOU'LL BE READY.
 [23] (EVENING RECESS HELD)
 [24]
 [25]

[1] CERTIFICATE
 [2]
 [3] STATE OF UTAH
 [4] COUNTY OF UTAH
 [5] THIS IS TO CERTIFY THAT THE FOREGOING PROCEEDINGS
 [6] WERE TAKEN BEFORE ME, CREED H. BARKER, A CERTIFIED
 [7] SHORTHAND REPORTER IN AND FOR THE STATE OF UTAH,
 [8] RESIDING AT SALT LAKE CITY, UTAH,
 [9] THAT THE PROCEEDINGS WERE REPORTED BY ME IN
 [10] STENOGRAPHY, AND THEREAFTER CAUSED BY ME TO BE
 [11] TRANSCRIBED INTO TYPEWRITING, AND THAT A FULL, TRUE
 [12] AND CORRECT TRANSCRIPTION OF SAID TESTIMONY SO TAKEN
 [13] AND TRANSCRIBED IS SET FORTH IN THE FOREGOING PAGES
 [14] NUMBERED FROM 3 TO 147 INCLUSIVE.
 [15]
 [16]
 [17]
 [18]
 [19]
 [20] CREED H. BARKER, CSR
 [21] LICENSE #270
 [22]
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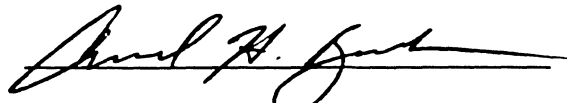
C E R T I F I C A T E

STATE OF UTAH

COUNTY OF UTAH

THIS IS TO CERTIFY THAT THE FOREGOING PROCEEDINGS
WERE TAKEN BEFORE ME, CREED H. BARKER, A CERTIFIED
SHORTHAND REPORTER IN AND FOR THE STATE OF UTAH,
RESIDING AT SALT LAKE CITY, UTAH;

THAT THE PROCEEDINGS WERE REPORTED BY ME IN
STENOTYPE, AND THEREAFTER CAUSED BY ME TO BE
TRANSCRIBED INTO TYPEWRITING, AND THAT A FULL, TRUE
AND CORRECT TRANSCRIPTION OF SAID TESTIMONY SO TAKEN
AND TRANSCRIBED IS SET FORTH IN THE FOREGOING PAGES
NUMBERED FROM 3 TO 147 INCLUSIVE.

A handwritten signature in cursive script, appearing to read "Creed H. Barker", is written over a horizontal line.

CREED H. BARKER, CSR

LICENSE #270

CREED H. BARKER, CSR

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR UTAH COUNTY
STATE OF UTAH

STATE OF UTAH

plaintiff,

VS.

CHARIS EASTMOND

defendant.

CASE NO. 951400053

JURY TRIAL

VOLUME II

APPEARANCES

FOR THE STATE:

DAVID COLE
DEPUTY UTAH COUNTY ATTORNEY
100 E. CENTER, #2100
PROVO, UTAH 84606

FOR THE PLAINTIFF:

SHELDEN CARTER
CARTER, PHILLIPS & WILKINSON
3325 NO. UNIVERSITY AVE.
PROVO, UTAH 84604

BEFORE: THE HONORABLE RAY M. HARDING

DATE: MAY 2, 1995

REPORTED BY: CREED H. BARKER, CSR

CREED H. BARKER, CSR

I N D E X

CLOSING ARGUMENT BY:
MR. COLE

153
166

MR. CARTER

158

[1] IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
 [2] IN AND FOR UTAH COUNTY
 [3] STATE OF UTAH
 [4]
 [5] STATE OF UTAH
 [6] plaintiff. CASE NO. 951400053
 [7] VS. JURY TRIAL
 [8] CHARIS EASTMOND VOLUME II
 [9] defendant.
 [10] APPEARANCES
 [11] FOR THE STATE: DAVID COLE
 [12] DEPUTY UTAH COUNTY ATTORNEY
 [13] 100 E. CENTER, #2100
 [14] PROVO, UTAH 84606
 [15] FOR THE PLAINTIFF: SHELDEN CARTER
 [16] CARTER, PHILLIPS & WILKINSON
 [17] 3325 NO. UNIVERSITY AVE.
 [18] PROVO, UTAH 84604
 [19] BEFORE: THE HONORABLE RAY M. HARDING
 [20] DATE: MAY 2, 1995
 [21] REPORTED BY: CREED H. BARKER, CSR
 [22]
 [23]
 [24]
 [25]

[1] Tuesday, May 2, 1995
 [2] THE COURT: We're met in chambers. The
 [3] court has provided a copy of its intended instructions
 [4] to counsel. They've had an opportunity to review
 [5] them. They have previously discussed and heard
 [6] argument on the issue of lesser included offenses.
 [7] And the court has concluded that it would instruct on
 [8] the lesser included, including those in the verdict
 [9] forms attached to the instructions.
 [10] Counsel, any exceptions or objections to
 [11] the instructions?
 [12] MR. COLE: The state has no objections.
 [13] MR. CARTER: The defendant has submitted a
 [14] request for instructions which the court has not
 [15] given. We would take exception and object to failure
 [16] to give those. Basically those instructions requested
 [17] tried to distinguish residue found on paraphernalia
 [18] from the substantive charge of possession of cocaine
 [19] or methamphetamine. We believe the law, in
 [20] conformance with our motion to dismiss, contemplates
 [21] residue upon paraphernalia should not be considered to
 [22] the substantive charge of possession of cocaine,
 [23] methamphetamine possession.
 [24] We take exception to the state's - the
 [25] court giving state's requested lesser included

I N D E X

[1]
 [2] CLOSING ARGUMENT BY: 153
 [3] MR. COLE 166
 [4] MR. CARTER 168
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[1] offenses. We would take exception to instruction
 [2] number 12 regarding drug free zone; that if she's not
 [3] aware of it, it's still considered to be a drug free
 [4] zone within the statute thereby imposing strict
 [5] liability upon her.
 [6] Instruction 25 we would object to because
 [7] it comments upon her being a witness and suggests that
 [8] her interests in this matter should be considered,
 [9] thereby commenting upon the testimony.
 [10] THE COURT: Don't you want me to give that?
 [11] MR. CARTER: Uh, uh (negative).
 [12] THE COURT: Any objection if I remove it?
 [13] MR. COLE: No, your Honor.
 [14] THE COURT: Okay.
 [15] MR. CARTER: That's the only objections or
 [16] exceptions we have.
 [17] THE COURT: Okay. There will be no
 [18] instruction 25.
 [19] MR. COLE: I have one request, your Honor.
 [20] In light of the fact you're giving instruction 21,
 [21] which is the any amount of controlled substance is
 [22] sufficient to support the charge and in light of
 [23] counsel's indication he takes exception to the residue
 [24] comments, as I understand it, the court is ruling as a
 [25] matter of law in accordance with State versus Varia

[1] and State versus Warner, that he not be allowed to
[2] argue to the jury and attempt to instruct them that
[3] residue is not sufficient for conviction because of
[4] the facts it is the law.

[5] THE COURT: Yeah, I think that's legal
[6] argument and you've made that on the basis, I think,
[7] of the double jeopardy concept. I considered that.

[8] Okay, thank you, counsel. We'll get the
[9] jury up here.

[10] (Proceedings returned to courtroom)

[11] THE COURT: All right. The record may show
[12] the jury is all present; that counsel for the state,
[13] counsel for the defendant and the defendant are
[14] present.

[15] As I indicated to you yesterday afternoon
[16] as you left, you have now heard all of the evidence
[17] that will be presented in this matter. And it is now
[18] the court's duty to instruct you in the law that
[19] applies to this case. And it's your duty as jurors to
[20] follow the law as the court states it to you
[21] regardless of what you personally believe the law is
[22] or ought to be.

[23] (Jury instructions read)

[24] THE COURT: Mr. Cole, you may proceed with
[25] your closing argument. If you would like to turn the

[1] lectern, you may.

[2] MR. COLE: Yes, your Honor.

[3] I would like to take just a few brief
[4] moments and review with you what you've heard in this
[5] trial and urge you to find the defendant guilty.

[6] As you've seen, there is no real dispute
[7] about most of the evidence you've heard. First of
[8] all, that there was cocaine found, as residue of
[9] cocaine, found in a small vial on the defendant's
[10] person. That was the testimony of the officer who
[11] actually did any -- actually the officer who received
[12] the evidence. We've also heard testimony that there
[13] was a film canister that had cocaine residue in it,
[14] found in her purse. She does not dispute it was found
[15] in her purse. She disputes and says someone placed it
[16] there.

[17] Both of those were tested at the crime lab
[18] and there was a positive reaction for cocaine; not
[19] only in the larger purse, but the smaller purse found
[20] therein. They found fragments of marijuana leaves.
[21] Her testimony was another person placed them there.
[22] She does not dispute that is her purse.

[23] You heard testimony that in her bedroom
[24] they found methamphetamine on a light bulb used to
[25] smoke illegal substance. That was tested and found to

[1] be methamphetamine.

[2] You've heard testimony they found
[3] throughout the home, scales, straws, a butane torch,
[4] steel wool, both inside the small pipes that were
[5] found, and also a piece of unused steel wool. And a
[6] tremendous number of needles were found there. They
[7] found also containers, canisters, baggies, light bulbs
[8] and spoons. These were found throughout the home.
[9] And there's no question that Charis was living there.
[10] She admits to living there. Her clothing was there.
[11] There were pieces of written correspondence addressed
[12] to her at that address. In short, it's clear it's her
[13] home.

[14] Now, the amounts of the drug that were
[15] found were not great. They were characterized by the
[16] defendant and the officers as residue. But as the
[17] judge has indicated to you, any quantity of a
[18] controlled substance is sufficient to support the
[19] charge of possession of a controlled substance if the
[20] defendant knew of its nature and presence and intended
[21] to exercise control over it. She did that. She had
[22] the methamphetamine and cocaine in her possession. It
[23] was found not only in her possession, but in various
[24] places where she exercised control.

[25] Now, you have been given different options

[1] with regard to what your verdict can be. Essentially
[2] there are three. The charge as originally given, a
[3] lesser included charge which takes off the language
[4] about a drug-free zone and a verdict of not guilty
[5] with respect to the drug free zone. The Court has
[6] indicated to you it has to be a recreation area to
[7] which children go and is open to the public. The only
[8] real question in this matter with respect to that, is
[9] was it open to the public. Now, it was not in the
[10] usual sense. That is clear. They were not taking
[11] tickets, they were not charging people to come on to
[12] the premises. But in the practical sense, in the
[13] day-to-day sense, it clearly was open. The caretaker
[14] testified that 10,000 people came to the Saratoga
[15] resort over the course of that summer. Charis
[16] admitted there were at least over 400 there on
[17] one-fourth of July. The caretaker testified they kept
[18] up the insurance; that they spent a \$1,000.00 a month
[19] on utilities; that they kept the pools open and clean;
[20] that they kept the slide open and clean; that there
[21] were 60 families that had standing invitations to come
[22] and use the park; and that the only people they turned
[23] away when requested were people that wanted to pay
[24] money, commercial groups. When church groups came and
[25] asked, they were allowed to use it. When a youth

[1] group of over a thousand people asked to use it they
 [2] were allowed over the weekend. It was certainly open
 [3] to members of the public. They were allowed to use it
 [4] free and also used the services. He also testified
 [5] that boats were allowed to use the harbor area located
 [6] on the premises. They were allowed to pull up and do
 [7] whatever they needed to. I would submit to you that
 [8] demonstrates clearly this is open to the public in
 [9] that sense and that is sufficient to support a
 [10] conviction.

[11] Now, contrast that testimony with what you
 [12] heard from Chans. She does not dispute the fact
 [13] those items were found close to her, in her home and
 [14] so on, and so forth. But her testimony is that the
 [15] officers lied and planted the original piece of
 [16] evidence on her person when they searched her. Then
 [17] an additional second person, someone she characterized
 [18] as having a vendetta against her, placed the marijuana
 [19] in her purse. Then a third person, a friend of her's,
 [20] admitted to having the film cannister and leaving that
 [21] in her larger purse.

[22] Now, we have three different people
 [23] involved in placing controlled substances in her
 [24] control. And then finally she indicates that the
 [25] paraphernalia was planted throughout the home by the

[1] officers; the large number of syringes you saw in the
 [2] cannister and the syringes in the small rolled
 [3] cannister, and all the other items, scales, spoons,
 [4] and so on, and so forth; pipes, butane torch, all of
 [5] those items were left by the officer. That was her
 [6] final statement as she testified, that the officers
 [7] planted everything.

[8] I submit to you, ladies and gentlemen, as
 [9] the court has indicated to you, reasonable doubt is a
 [10] question of common sense. If you are firmly convinced
 [11] that a person has done what they're charged with, then
 [12] you may find them guilty beyond a reasonable doubt. I
 [13] submit to you that the testimony you heard from the
 [14] officers and the caretaker established -- establishes
 [15] beyond a reasonable doubt that Charis Eastmond was in
 [16] control of these substances and this paraphernalia;
 [17] that that is more credible than her testimony with
 [18] regard to how those items were there and her version
 [19] requires too great a stretch of the imagination and I
 [20] request you find her guilty beyond a reasonable doubt
 [21] on each of the charges as were read to you.

[22] MR. CARTER: Ladies and gentlemen, there
 [23] are times I would like to be in California and this
 [24] weather suggests maybe that's where I would like to
 [25] be, to get some sunshine and get away from the rain.

[1] But as jurors I'm sure you're appreciative being in
 [2] Utah as opposed to that busy process they're involved
 [3] with down in L. A. I'm sure you can understand some of
 [4] the the brevity we've exercised in how speedy we've
 [5] gotten the issue to you. I'm sure you appreciate
 [6] that, but that doesn't diminish the responsibility we
 [7] have as the attorneys and court in these matters, and
 [8] it doesn't diminish by any stretch of the imagination
 [9] the fundamental beliefs our constitution and country
 [10] is based upon; a person is innocent until proven
 [11] guilty beyond a reasonable doubt. As Ms. Eastmond
 [12] sits there, she is completely innocent. These are
 [13] lessons we've been taught and learned and adopted in
 [14] our country and constitution, back from the old
 [15] England days when the Kings and monarchs took
 [16] advantage of the citizens. It's something not to be
 [17] taken lightly and not to be ignored by any stretch of
 [18] the imagination.

[19] Mr. Simpson may have considerable wealth
 [20] and attorneys to apply, but Ms. Eastmond does not.
 [21] But it does not diminish the responsibility we have to
 [22] the constitution. She's presumed to be innocent.
 [23] When we adopted our good constitution, we
 [24] incorporated certain protections for our citizenry.
 [25] It spoke of jurors and spoke of other protections by

[1] letting us lay your case before you and you make your
 [2] judgments. That's not something we've attempted to
 [3] diminish over the last 200 years, and we take pride in
 [4] it. And it works. The court made comments to you
 [5] yesterday about how well the system works and it does
 [6] work well because citizens take responsibility for
 [7] their actions as we try to govern ourselves. Not so
 [8] for most systems.

[9] I ask you to take a look at the case and
 [10] measure the case against those principals of law and
 [11] whether the state in this case has proved to you
 [12] beyond a reasonable doubt the guilt of Charis
 [13] Eastmond.

[14] In this case the government has an
 [15] imposition or duty bound to prove guilt beyond a
 [16] reasonable doubt. They have a great deal of tools and
 [17] they have a great deal of wealth and power that a
 [18] citizen, a lone citizen does not have. So in
 [19] competition it's not a very fair game. But what makes
 [20] it a more equal playing accord or field is this proof
 [21] beyond a reasonable doubt. So I ask you to consider
 [22] that.

[23] The court has instructed you if there's two
 [24] different interpretations that can be made from any
 [25] one piece of evidence, you're duty bound to make that

[1] inference in favor of innocence as opposed to guilt.
 [2] I would ask you to keep that in mind
 [3] As we look at the common-law of Scotland,
 [4] they have a different verdict form than we have here.
 [5] They give you three choices. They can say the person
 [6] is guilty because he's guilty beyond a reasonable
 [7] doubt. They can say they're not guilty because it's
 [8] not been proved or they can say they're innocent,
 [9] which means basically innocent as the driven snow.
 [10] But our situation, in our country, we only give you
 [11] two options; guilty or not guilty. Not saying she's
 [12] innocent but saying she's not guilty, which really
 [13] means the state has not proven their case beyond a
 [14] reasonable doubt.
 [15] You can take the testimony of Chans and
 [16] disregard it if you choose to do so. That's your
 [17] liberty and option to do so. But I would ask you to
 [18] look at a couple factors. The court has made certain
 [19] instructions to you. Knowledge and ability in this
 [20] situation, occupancy, and possession of that home do
 [21] not equate out to guilt. This is kind of a lesson
 [22] we've learned. And I asked you when we did the jury
 [23] voir dire, we made certain inquiries regarding the
 [24] family of you people, family who have been found
 [25] guilty or charged with similar offenses. And I'm

[1] there and apparently this stuff was placed there. I
 [2] ask you to take a look at that.
 [3] The court in instruction 30 says the
 [4] presence of others in some form may not be relevant
 [5] because Mr. Peterson and Shannon Eastmond and
 [6] Ms. Fowler may have been prosecuted in some separate
 [7] proceeding -- let me rephrase it.
 [8] If they've been prosecuted or not, it
 [9] really doesn't matter in this case. But if they're
 [10] the ones that placed it there, if the paraphernalia is
 [11] theirs, Chans is not necessarily guilty. She may be
 [12] because two people can have the same intent to use the
 [13] same item, but if the inference of innocence is
 [14] applied in that item, the state has to have more nexus
 [15] between the drug and Charis than just mere presence --
 [16] I think I'm confusing that really well.
 [17] Let me see if I can restate that. The
 [18] court has instructed you that exclusive occupancy of
 [19] the home may be a factor, but if that occupancy or
 [20] domain over that property is not exclusive, other
 [21] people had access to it, that's not sufficient enough
 [22] alone to convict her. You have to have something
 [23] else. The court has made statements about things you
 [24] may be able to use to make that inference, but the
 [25] mere presence there is not sufficient alone.

[1] assuming those are children in the home. A couple
 [2] jurors know if a child has a bedroom and the child has
 [3] drugs in that home, the parents aren't necessarily
 [4] guilty. Even if it's in a sugar bowl in the cupboard,
 [5] it doesn't mean you're guilty because you have to have
 [6] the intent and ability. You may wind up with a
 [7] situation like Chans. But that possession of the
 [8] home and property does not necessarily mean guilt.
 [9] The state must prove beyond a reasonable doubt a nexus
 [10] between the accused and the drug to permit the
 [11] inference beyond a reasonable doubt she did have the
 [12] power and intent to exercise dominion and control over
 [13] that drug.
 [14] If you look at instruction number 15,
 [15] ownership and occupancy are not alone sufficient to
 [16] justify a conviction. That's instruction number 18.
 [17] Chans must be found beyond a reasonable doubt that
 [18] she had knowledge of the drug's nature and its
 [19] presence and she intended to exercise dominion and
 [20] control. That's instruction number 21. And when you
 [21] play into those scenarios the fact she had a 3 x 5
 [22] card in her back pocket indicating she knew the police
 [23] were coming, common sense dictates, if she knew that
 [24] substance was there she would have gotten rid of it if
 [25] in fact she were guilty. But apparently she had it

[1] especially when it's not exclusive possession or use.
 [2] If I could look at a few elements of the
 [3] charge. Mr. Cole wants to have you find that this is
 [4] a drug-free zone. I ask you just to remember the
 [5] evidence that was put on by Charis, also by the
 [6] state's witness. Saratoga had been closed. It's not
 [7] open to everybody. There's signs up there saying it's
 [8] closed. It's simply not open to the public. You have
 [9] a chance and opportunity to go down to what's called
 [10] the lesser included offense. You can find her guilty
 [11] of the drug possession, if you choose to do that, in a
 [12] drug-free zone, which enhances the penalties, or you
 [13] can reduce that down and say: Mr. Cole, you didn't
 [14] prove to us beyond a reasonable doubt that it was in
 [15] fact a drug-free zone, therefore, we're not going to
 [16] find that. We're going to find her just guilty of
 [17] drug possession or paraphernalia alone. You have that
 [18] option.
 [19] I ask you to look at that evidence that was
 [20] presented yesterday. Saratoga was not open to the
 [21] public. It was shut down. The only people who had
 [22] access to it were people who applied for permission
 [23] and it was granted on a case by case basis. On August
 [24] 3, 1994 it was not being used in any fashion as a
 [25] recreational area or amusement park.

[1] I ask you to take a look at the
 [2] paraphernalia charge and ask you to take into account
 [3] these factors. The home, the house, there was not
 [4] exclusive domain over that by Chans Eastmond. She
 [5] was not the only one that had access to that home.
 [6] And we've talked about it before. Occupancy or
 [7] possession of a home does not mandate conviction.
 [8] Shannon Eastmond apparently had been living there.
 [9] Shannon Eastmond apparently had a number of items in
 [10] the home, and if you remember the testimony, all of
 [11] the items of paraphernalia were Shannon Eastmond's.
 [12] She had been living there and stored a lot of her
 [13] property there. There's a good chance those items of
 [14] paraphernalia belonged to Shannon Eastmond. You have
 [15] another gentleman living there with Chans, Mike
 [16] Peterson. The officer didn't want to admit the fact
 [17] the utilities were placed in Mr. Peterson's name, but
 [18] we've produced evidence to you that when the officers
 [19] searched the home, the phone bill was placed in Mike
 [20] Peterson's name. The utilities were also in his name.
 [21] The other factor in this case is why
 [22] weren't fingerprints taken? It would have been easy
 [23] to do. You get those items of paraphernalia or film
 [24] canister and see if her fingerprints are on it. She
 [25] wants to say Bambi Fowler and Shannon Eastmond were

[1] not planted? I don't know.
 [2] I ask you to take those considerations into
 [3] factor and think about them and see if in your opinion
 [4] you can honestly say there's proof beyond a reasonable
 [5] doubt.
 [6] THE COURT: Rebuttal, counsel?
 [7] MR. COLE: Just briefly, your Honor.
 [8] With respect to Officer Caldwell, he was
 [9] not called to testify because the other people
 [10] indicated he was not involved in search of her person
 [11] period. Officer Liddiard testified that he was not
 [12] there, that Officer Liddiard and another person
 [13] searched her person. It was not Officer Caldwell.
 [14] He's not a central factor in this case, and the fact
 [15] that someone, an untested person that was not subject
 [16] to any cross-examination or any explanation, doesn't
 [17] like him, doesn't indicate that Chans is not guilty.
 [18] What does indicate that she's guilty? The
 [19] fact she had cocaine on her person in her purse, in
 [20] her home, on her floor, in her bedroom, every other
 [21] conceivable part of her home. What else indicates
 [22] that she's guilty? That the explanation she gives is
 [23] not credible. That's why we ask you to find her
 [24] guilty beyond a reasonable doubt.
 [25] THE COURT: We need to get the bailiff in

[1] present. Well, they know they were under
 [2] investigation by the police at the time. Has the
 [3] state excluded the evidence of guilt of Bambi Fowler
 [4] and Shannon Eastmond and Mike Peterson? In my view, I
 [5] would argue to you they have not. There's a good
 [6] chance those people are guilty. Have they proven to
 [7] you beyond a reasonable doubt that they are not? I
 [8] suggest they have not.
 [9] Manjuana, now, apparently it was found in
 [10] her purse and also found in a drawer. You are
 [11] completely at liberty to disbelieve anything Chans
 [12] says. You have that prerogative. But I also ask you
 [13] in that situation to consider the fact of the 3 x 5
 [14] card, the knowledge the police were coming and she
 [15] knew they were going to be there. I ask you to
 [16] consider the film canister. It was apparently
 [17] Chans's friend's. Did the defendant have knowledge
 [18] and ability to use that substance? The same with the
 [19] amber vial.
 [20] You heard one of the comments about
 [21] officer Caldwell. He was to be here. The defense
 [22] believes that was planted on the defendant by Officer
 [23] Caldwell. Why wasn't he here? Did he choose not to
 [24] testify? Why didn't they call him as a witness, call
 [25] him to the stand and testify that that substance was

[1] here.
 [2] At this time, I'll ask the clerk to swear
 [3] the bailiff and take the jury in charge.
 [4] (Bailiff sworn)
 [5] THE COURT: If you'll take the instructions
 [6] and the verdict form right here. And if you'll now go
 [7] with the bailiff out to the jury room and commence
 [8] your deliberation. We'll bring the exhibits into you.
 [9] (Jury began deliberations at 10:05 a.m.)
 [10] THE COURT: Any other matters at this time,
 [11] counsel?
 [12] MR. COLE: I don't think so.
 [13] MR. CARTER: No.
 [14] THE COURT: We'll be in informal recess
 [15] until the jury returns. If you leave, make sure you
 [16] leave a number with Georgia that you can be reached
 [17] at.
 [18] (recess held)
 [19] (Jury returned with verdict at 12:08 p.m.)
 [20] THE COURT: The record may show the jury is
 [21] all present, counsel for the state and counsel for the
 [22] defendant and the defendant are present.
 [23] And without disclosing what the verdict is,
 [24] would the person who has been selected as foreperson
 [25] please stand and tell us your name.

[1] JURY FOREPERSON: Gary Anderson.
 [2] THE COURT: Have you reached a verdict?
 [3] JURY FOREPERSON: We have.
 [4] THE COURT: Very well. If you'll provide
 [5] it to the bailiff, please. And you may be seated.
 [6] Thank you.
 [7] All right, I'll ask the clerk to read the
 [8] verdict -- just a moment. Let me make sure they're
 [9] all right. Too many verdict forms.
 [10] All right. I'll ask the clerk to read the
 [11] verdicts.
 [12] THE CLERK: In the matter of the State of
 [13] Utah versus Chans Eastmond, case number 951400063, as
 [14] to the charge of possession or use of methamphetamine,
 [15] a controlled substance in a drug free zone, count I
 [16] of the information, we the jury impaneled in the above
 [17] entitled cause find the defendant guilty.
 [18] As to the charge of possession or use of
 [19] cocaine, a controlled substance, in a drug free zone,
 [20] count II of the information, we the jury impaneled in
 [21] the above entitled cause find the defendant guilty.
 [22] As to the charge of possession or use of
 [23] marijuana, a controlled substance, in a drug free
 [24] zone, count III of the information, we the jury
 [25] impaneled in the above entitled cause, find the

[1] THE CLERK: Cari prince?
 [2] MS. PRINCE: Yes.
 [3] THE CLERK: Gregory Christensen?
 [4] MR. CHRISTENSEN: Yes.
 [5] THE CLERK: Gary Anderson?
 [6] MR. ANDERSON: Yes.
 [7] THE CLERK: Lillian Thorsen?
 [8] MS. THORESON: Yes.
 [9] MR. CARTER: If we could maybe simplify
 [10] this, and ask them if they have any disagreement -- I
 [11] don't want to go through all four.
 [12] THE COURT: All right. Can we ask them if
 [13] there's any that didn't agree with this verdict?
 [14] MR. CARTER: That would be fine.
 [15] THE CLERK: Are there any of you who did
 [16] not agree with this verdict? David Taylor?
 [17] MR. TAYLOR: No.
 [18] THE CLERK: Lori England?
 [19] MS. ENGLAND: No.
 [20] THE CLERK: Steven Masterson?
 [21] MR. MASTERSON: No.
 [22] THE CLERK: Colleen turner?
 [23] MS. TURNER: No.
 [24] THE CLERK: Cari prince?
 [25] MS. PRINCE: No.

[1] defendant guilty.
 [2] As to the charge of unlawful possession or
 [3] use of drug paraphernalia in a drug free zone, count
 [4] IV of the information, we the jury impaneled in the
 [5] above entitled cause, find the defendant guilty.
 [6] Dated this 2nd day of may, 1996, Gary
 [7] Anderson, foreperson.
 [8] THE COURT: Do you desire to have the jury
 [9] polled?
 [10] MR. CARTER: If you would, please.
 [11] THE COURT: Very well. I'll ask the clerk
 [12] to pole the jury.
 [13] THE CLERK: Ladies and gentlemen, was this
 [14] and is this your verdict? Count I, possession or use
 [15] of methamphetamine, a controlled substance in a
 [16] drug-free zone; David Taylor?
 [17] MR. TAYLOR: Do I just say yes?
 [18] THE COURT: Yes or no.
 [19] MR. TAYLOR: Yes.
 [20] THE CLERK: Lori England?
 [21] MS. ENGLAND: Yes.
 [22] THE CLERK: Steven Masterson?
 [23] MR. MASTERSON: Yes.
 [24] THE CLERK: Colleen turner?
 [25] MS. TURNER: Yes.

[1] THE CLERK: Gregory Christensen?
 [2] MR. CHRISTENSEN: No.
 [3] THE CLERK: Gary Anderson?
 [4] MR. ANDERSON: No.
 [5] THE CLERK: Lillian Thorsen?
 [6] MS. THORESON: No.
 [7] THE COURT: All right. I appreciate your
 [8] service and a good job. You've been prompt in
 [9] performing it. I'm sorry we delayed it as long as we
 [10] did, and not being prepared yesterday afternoon. But
 [11] my thanks to you and you're now excused to go about
 [12] your affairs. And if the attorneys should wish to
 [13] contact you, they're at liberty to do so. However,
 [14] you're also at liberty to either discuss it with them
 [15] or not discuss it with them as you may choose. You've
 [16] got no obligation to do so. So again, thank you very
 [17] much and you'll be excused. I appreciate your time.
 [18] (Jury dismissed at 12:13 p.m.)
 [19] THE COURT: Okay, counsel, any other
 [20] matters at this time?
 [21] MR. CARTER: We have a motion to dismiss in
 [22] front of you on the drug-free zone, as well as on the
 [23] double jeopardy.
 [24] THE COURT: Umm, I have some serious
 [25] reservations about the drug-free zone. As to the

[1] double jeopardy matters and any others I took under
 [2] advisement, other than the drug-free zone, I will deny
 [3] the motions. I think I want to think about the other
 [4] a little longer. I'm not sure I'm convinced that this
 [5] was in a drug-free zone in accordance with the
 [6] instruction that I gave to the jury. But perhaps that
 [7] is a factual question and I'll think about it.
 [8] They've made that decision and I'm not sure I totally
 [9] agree. But I think if I decide it's a totally factual
 [10] issue I'll obviously deny the motion and let it stand.
 [11] If I decide it's a legal issue, I may well grant the
 [12] motion and consider the matter under the next lower
 [13] category without the enhancement.

[14] At any rate, sentencing in this matter will
 [15] be set for the 16th of June at the hour of 8 o'clock
 [16] a.m., at which time the defendant is ordered to be
 [17] present. The defendant is further ordered to report
 [18] immediately to the department of adult probation and
 [19] parol and cooperate with them in giving them the
 [20] information they request in order to assist them in
 [21] preparing a report for the sentencing phase of this
 [22] case. And I don't think that will create any problem,
 [23] but I'm reserving ruling on that one narrow issue and
 [24] will advise you within the next day or two of that.

[25] MR. CARTER: Okay.

[1] THE COURT: The defendant is presently

[2] released on bail, I believe.

[3] MR. CARTER: She is.

[4] THE COURT: Any reason that shouldn't
 [5] continue in effect?

[6] MR. COLE: Judge, the only concern I have
 [7] is she has consistently not shown up until the day
 [8] after when a warrant has been issued. I would like to
 [9] pose the possibility of additional sanctions if she
 [10] does not show up as ordered. I know some judges have
 [11] done that in the past and we've found that to be
 [12] effective. I think we need something that requires
 [13] her to show up. Because she's demonstrated
 [14] consistently she won't show up until a warrant was
 [15] issued.

[16] THE COURT: I think you understand what's
 [17] been ordered today. And if you fail to report so that
 [18] the report that they prepare is delayed, a warrant
 [19] will issue so they won't have any trouble getting in
 [20] touch with you. Because they'll do it at the jail.
 [21] And also as I indicated, you're ordered to be present
 [22] on the 16th of June at 8 o'clock for the sentencing.
 [23] Otherwise the court will permit the present release to
 [24] remain in effect. Okay, thank you, counsel.
 [25] (Proceedings concluded)

C E R T I F I C A T E

STATE OF UTAH

COUNTY OF UTAH

THIS IS TO CERTIFY THAT THE FOREGOING PROCEEDINGS
 WERE TAKEN BEFORE ME, CREED H. BARKER, A CERTIFIED
 SHORTHAND REPORTER IN AND FOR THE STATE OF UTAH,
 RESIDING AT SALT LAKE CITY, UTAH;

THAT THE PROCEEDINGS WERE REPORTED BY ME IN
 STENOGRAPH, AND THEREAFTER CAUSED BY ME TO BE TRANSCRIBED
 INTO TYPEWRITING, AND THAT A FULL, TRUE AND CORRECT
 TRANSCRIPTION OF SAID TESTIMONY SO TAKEN AND TRANSCRIBED
 IS SET FORTH IN THE FOREGOING PAGES NUMBERED FROM 150 TO
 174 INCLUSIVE.

 CREED H. BARKER, CSR

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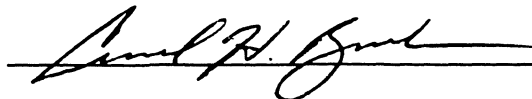
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A handwritten signature in cursive script, appearing to read "Creed H. Barker", is written over a horizontal line.

CREED H. BARKER, CSR

LICENSE #270

CREED H. BARKER, CSR

INSTRUCTION NO. 11

You are instructed that a drug-free zone is any area within 1,000 feet of the grounds or structure of a recreation area open to the public, designed or intended for recreational use to which children are likely to go, irrespective of public or private ownership.